

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

645

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 22966

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellee,
v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,
Appellants.

NO. 22993

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellant,
v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,
Appellees.

Appeals From A Judgment Of The United States District Court
For The District Of Columbia

REPLY BRIEF OF RAILWAY EMPLOYES' DEPARTMENT, AFL-
CIO, SYSTEM FEDERATION NO. 95, ET AL., APPELLANTS
IN CASE NO. 22966 AND APPELLEES IN CASE NO. 22993

JUL 23 1969

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The Railway Employees' Department, AFL-CIO, and System Federation No. 95, et al. (hereinafter referred to collectively as "the Unions"), appellants in Case No. 22966 and appellees in Case No. 22993, submit this reply brief to the Court pursuant to the Court's order of May 15, 1969, consolidating the two cases and fixing the briefing schedule.

Reply To The Burlington's Contention That
Notwithstanding The Intervention Of The
Secretary Of Labor The District Court Did
Not Err In Granting A Preliminary Injunction

The Burlington argues (Br., pp. 19-21) that in spite of the fact that the Secretary of Labor had intervened in the dispute for the purpose of conducting negotiations under his auspices with a moratorium on strike threats the District Court was still justified in issuing an injunction because counsel for the Unions advised counsel for the Burlington that he would recommend that the Unions not sign the Secretary's Memorandum of Understanding unless the Burlington dismissed its suit and this the Burlington would not do.

Assuming arguendo that this is a correct statement of fact,^{1/} the Burlington upon its own showing was not entitled to an injunction. It would have been injured in no way by signing the memorandum and remitting the dispute to negotiations under the auspices of the Secretary of Labor and dismissing its suit, because negotiations could not be broken off without five days' notice to the Secretary, which would have given the Burlington plenty of time to reinstate the suit and obtain a restraining order, if necessary. The whole sequence of events clearly show that the Burlington was attempting to gain an inequitable advantage in the situation.

^{1/} The Unions do not agree that this is a correct statement, but recognize that this Court cannot resolve such a question.

The Burlington's brief also suggests that this Court cannot consider this question because the Unions did not file a motion to modify or dissolve the preliminary injunction on this ground, thus creating a sworn record. The position of the Unions is that accepting the statement of facts as set forth in the Burlington's brief there did not exist a legal basis for the grant of injunctive relief. Moreover, if this boils down to a technical question, such as suggested by the Burlington, then the matter should be remanded to the District Court with an indication from this Court as to what it believes should be done if these facts are correct. The Unions should not be subjected to the extraordinary relief of an injunction where such an injunction was not required and thus place the Burlington in a position where although it loudly proclaims its desire to negotiate it obviously has no incentive to make an agreement except upon its own terms.

This is particularly true since the Burlington's brief makes it clear that the Unions did not, in fact, call a strike. The Burlington's brief shows (p. 15) that it commenced its suit on March 12, 1969, following the last meeting between the parties on the basis of a notice on the bulletin board of one of its shops advising shopcraft employees that they would be able to strike 30 days after February 5 and a letter dated February 16, 1969, by a General Chairman of one of the unions to local chairmen advising that the General Chairman had agreed to seek authority from the International officers to conduct a strike, which left some doubt as to whether a strike was threatened prior to the time the suit was filed. In any event, it is clear that

the employees desired to resume negotiations under the auspices of the Secretary of Labor.

The Unions have always been prepared to sign the agreement to negotiate under the auspices of the Secretary of Labor and represents to the Court that they are prepared to sign such agreement as of this time without conditions other than those contained in the memorandum submitted by the Secretary. If the Burlington is prepared to do likewise, there is no need for an injunction because there can be no threat of a strike unless the Secretary of Labor is unable to achieve an agreement and even in that case the Burlington would have plenty of opportunity to seek injunctive relief.

II

Reply To The Burlington's Contention That The District Court Did Not Err In Holding That The Parties' Dispute Is One As To Which "National Handling" Is Obligatory

The Burlington argues (Br., pp. 21-33) that the District Court did not err in holding that the dispute between the Unions and the Burlington over the subcontracting of shopcraft work is one as to which national handling between all of the unions involved and all of the railroads (i.e. some 147 carriers) is obligatory under the Railway Labor Act because it claims that there has been a continuous practice of prior bargaining on a national scale on such issue. Therefore, the Burlington argues that the District Court's decision meets the standard laid down by this Court in Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co., 127 U.S. App. D.C. 298, 383 F.2d 225 (1967). The Burlington's argument has a number of facets which are considered separately below:

First, the Burlington points (Br., p. 21) to a finding of the District Court that national rules on the subject of contracting out have existed in the railroad industry since World War I. This finding of the District Court is factually in error as shown by the Burlington's brief. What the District Court has reference to is the fact that the collective bargaining agreements between the individual Unions here involved and the various railroads contain rules classifying the work to be performed by employees of a carrier signatory to such agreement, and that prior to the 1964 agreement regulating the subcontracting out of shopcraft work, the employees from time to time filed claims with the National Railroad Adjustment Board contending that these classification of work rules prohibited the subcontracting of the work described therein. These rules, however, in no sense could properly be described as rules on the subject of subcontracting out, as the Burlington's brief concedes. That brief states (Br., p. 5) that "the classification of work rules do not in terms regulate the contracting out of work but instead purport only to define the prospective 'jurisdiction' of the several crafts with respect to work which the carriers undertake to perform for themselves". Indeed, the report of Presidential Emergency Board No. 160, created to investigate the 1964 dispute between the Unions and the railroads on the subject of subcontracting out of shopcraft work points out that it was the failure of the National Railroad Adjustment Board to interpret the work classification rules as establishing effective limitations on the subcontracting of work which led to the dispute considered before that Board (Appendix B to Affidavit of B. G. Upton, Docket Item 5, Volume 1 of Joint Appendix). Moreover, not every railroad included a classification

of work, or so-called "scope", rule in its collective bargaining agreements with the shopcraft unions, a prime example being the Pennsylvania, the largest of the nation's railroads. Consequently, the existence of these classification of work or scope rules does not establish a showing of a continuous collective bargaining practice on a national scale with respect to the subject of subcontracting out of shopcraft work. Indeed, the District Court's conclusions with respect to the obligation to bargain upon a national basis on the subject matter of subcontracting out of shopcraft work (Docket Item 24, pp. 7-8, Vol. 2 of Joint Appendix), does not even refer to these classification of work rules as supporting its conclusion.

Second, the Burlington argues (Br., p. 21) such a showing of continuous collective bargaining practice on a national scale is established by the existence of the 1964 agreement on the subcontracting out of shopcraft work. However, the record shows that three major railroads, i.e. the Pennsylvania, the Southern, and the Florida East Coast, were not parties to that dispute (Appendix B to Affidavit of B. G. Upton, Docket Item 5, page 4, Vol. 1 of Joint Appendix). Indeed, the first major dispute arising in the railroad industry out of the practices of the carriers with respect to subcontracting of shopcraft work arose on the Pennsylvania, the nation's largest railroad, and resulted in collective bargaining between the shopcraft unions and that railroad alone, which produced an agreement regulating subcontracting of such work (p. 4, Docket Item 19, Vol. 2 of Joint Appendix). When two of the largest railroads in the country, i.e. the Pennsylvania and the Southern, are not parties to a so-called national movement on

subcontracting out, there can hardly be contended that there is a continuous collective bargaining practice on a national scale.

Third, the Burlington argues (Br. p. 22) that the strong showing of a continuous collective bargaining practice on a national scale on the subject of subcontracting out required by this Court's decision in the Atlantic Coast Line case as a condition prerequisite to the establishment of a requirement for national handling is evidenced by the fact that in November 1968 most of the nation's carriers served notices on the Unions proposing revision of the agreement of September 25, 1964, with respect to contracting out. The notices upon which the Burlington's argument is predicated are set forth as Appendix D to Docket Item 12, Vol. 1 of the Joint Appendix. These documents show that on November 27, 1968, the Burlington among other carriers received notice from four of the six Unions here involved proposing to revise and supplement rates of pay of employees represented by these unions and that on November 28, 1968, the Burlington served a counter Section 6 notice proposing, among other things, to eliminate all the agreements, rules, regulations, interpretations, and practices "however established" which in any way interfered with the carrier's right to subcontract out work. As the Unions' original brief points out (p. 27) the District Court did not find that this self-serving action was evidence of a showing of continuous collective bargaining practices on a national scale with respect to the subcontracting of work. To the contrary, the District Court misunderstood the Burlington's argument as contending that the Unions themselves had served such a notice and found that the subject is "one as to which the unions themselves continue to recognize that

multi-employer bargaining is appropriate, as indicated by the fact that most of the defendants served national notices on most of the Nation's carriers which include proposals regarding 'contracting out' and which gave rise to national bargaining which is now in progress" (emphasis supplied)(Docket Item 24, p. 8, Vol. 2 of Joint Appendix). Had the District Court correctly understood the facts, it would not have relied upon this evidence because it is obviously self-serving. The notices upon which the Burlington relies were filed some eight months after collective bargaining began between the Unions and the Burlington on the subject of contracting out by that carrier and were obviously designed solely to give the Burlington an out. By this action, the Burlington was simply trying to rectify its failure to make any contention in its original response to the Section 6 notice of the Unions in the present dispute served on March 25, 1968, to the effect that the subject matter had to be bargained on a national scale (Exhibit C to Complaint, Docket Item 1). There is no evidence that there has been any serious effort to conduct bargaining on the so-called November 28, 1968, notices to support the contention in the Burlington's brief that the subject matter is now being bargained on a national basis. In addition, since the Section 6 notices of the Unions involved in that negotiation was related solely to rates of pay, they did not have on the table in the negotiations to which the Burlington refers proposals such as are here involved.

Fourth, the Burlington argues (Br. pp. 23-24) that the Railway Labor Act gives it a right to designate its representatives without

interference or coercion by the Unions so that it has a legal right to insist upon national handling. This same argument was made by the carrier in the Atlantic Coast Line case (383 F.2d at page 228), and was rejected by this Court in its holding that mass handling was not required by the statute for bargaining on the issue involved in that particular case.

Fifth, the Burlington argues (Br. p. 24) that the Unions are not meeting the statutory requirement to exert every reasonable effort to make and maintain agreements by threatening to strike in their dispute with the Burlington on the subject of contracting out of work before they exhausted the possibility of a settlement in the alleged current national negotiations on the subject. This argument is simply another way of raising the Burlington's contention that the subject matter of the present dispute is presently involved in national negotiations. The reply to this contention is set forth above and need not be repeated here.

Sixth, the Burlington argues (Br. pp. 25-26) that national handling of the subject matter of this dispute is supported by decisions under the Labor-Management Reporting and Disclosure Act, which the Burlington contends support the proposition that where a practice or history of multi-employer bargaining has been established neither the employer nor the union may withdraw therefrom without the consent of the other side except in a timely and unequivocal manner. This argument adds nothing to the solution of the issue before this Court. This is simply another way of arguing that there is a continuous practice of bargaining on a national scale with respect to the subject matter here involved which the Unions dispute.

multi-employer bargaining is appropriate, as indicated by the fact that most of the defendants served national notices on most of the Nation's carriers which include proposals regarding 'contracting out' and which gave rise to national bargaining which is now in progress" (emphasis supplied)(Docket Item 24, p. 8, Vol. 2 of Joint Appendix). Had the District Court correctly understood the facts, it would not have relied upon this evidence because it is obviously self-serving. The notices upon which the Burlington relies were filed some eight months after collective bargaining began between the Unions and the Burlington on the subject of contracting out by that carrier and were obviously designed solely to give the Burlington an out. By this action, the Burlington was simply trying to rectify its failure to make any contention in its original response to the Section 6 notice of the Unions in the present dispute served on March 25, 1968, to the effect that the subject matter had to be bargained on a national scale (Exhibit C to Complaint, Docket Item 1). There is no evidence that there has been any serious effort to conduct bargaining on the so-called November 28, 1968, notices to support the contention in the Burlington's brief that the subject matter is now being bargained on a national basis. In addition, since the Section 6 notices of the Unions involved in that negotiation was related solely to rates of pay, they did not have on the table in the negotiations to which the Burlington refers proposals such as are here involved.

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Seventh, the Burlington argues (Br. pp. 26-29) that the reports of the National Mediation Board, as well as the statements of union leaders, support the decision below. These reports and statements prove nothing with respect to the subject matter of subcontracting out of shopcraft work since they do not even mention such subject. The 1962 negotiations between the unions and the Pennsylvania alone, which were the first negotiations dealing with the subject of subcontracting of shopcraft work, refute the Burlington's contentions.

It should also be observed that the District Court's decision did not refer to most of the contentions now made by the Burlington. Its finding as to the obligation of the Unions to bargain about the subject matter of subcontracting of work on a national scale was based upon the conclusion (1) that the subject matter is currently being handled upon a national basis as a result of notices served by the Unions (a conclusion which, as pointed out above, is contrary to the facts), and (2) the 1964 agreement between the Unions and approximately 147 railroads which did not include the nation's two largest railroads. (See pp. 7-8 of Docket Item 24, Vol. 2 of Joint Appendix.)

The Burlington's brief also seeks (Br. pp. 29-33) to answer the contentions of the Unions that there were sound reasons applicable only to the Burlington for the Unions to seek at this time a revision of the 1964 agreement on the subcontracting of shopcraft work as to the Burlington alone. The Burlington brief (p. 29) argues that the Unions by making these contentions are asking this Court to re-evaluate the evidence with respect to the question as to whether national handling is obligatory and that this matter should be left to the District

Court. Yet, this is precisely what the Court did in the Atlantic Coast Line case, cited above, in reversing the conclusion of the District Court that the subject matter of the dispute there involved was required to be handled upon a national basis. Moreover, the record in this case shows a particular need for this Court to give a careful examination to the situation because the District Court based in large part its conclusions as to the requirement for national handling of the present dispute upon a clear error with respect to the facts before it when it concluded that the Unions continue to recognize that multi-employer bargaining is appropriate because most of them have served national notices on the nation's carriers with respect to the subject matter when, in fact, the Unions have not served such notices (see page 8 above). One can only speculate as to what the District Court would have concluded had it not erred with respect to this fact upon which it placed so much importance. Naturally, the Burlington's brief is silent with respect to this error.

The Burlington also argues (p. 30) that the Unions' contentions that they were justified in seeking a revision of their agreement with the Burlington alone because of that carrier's interpretation and application of the 1964 agreement is without merit because the arbitration board established by the agreement has ruled against the Unions' interpretation of the agreement in most of the cases coming before that board. In support of its argument, the Burlington refers to pages 8 and 9 of its brief. A reference to these pages establishes beyond question that the Unions are correct in contending that the Burlington applied the 1964 agreement in a manner entirely different from that of other railroads signatories thereto so as to create a need

from the Unions' point of view of revisions in the agreement with the Burlington. Page 8 of the Burlington's brief states that since 1964 the arbitration board under the agreement has rendered awards in 126 cases in which the shopcraft unions have challenged the contracting out of particular work by particular carriers, of which 20 awards involved the Burlington. In other words, approximately 16% of all of the disputes which have arisen under the 1964 and which have been carried to the arbitration board resulted from the Burlington's application of the agreement. On this basis, the 146 other carriers who were signatories to the 1964 agreement accounted for on the average only 67% of 1% of the remaining disputes, or less than three-fourths of 1% per carrier. In brief, the Burlington's application of the agreement resulted in approximately 30 times more disputes than the average for each of the other 146 carriers. Moreover, the fact that in these 20 awards the arbitration board rejected the Unions' contentions in 14 cases establishes rather than downgrades, as the Burlington contends, the need of the Unions to seek a revision of the agreement. What this data shows is that the hopes of the Unions with respect to the interpretation and application of the 1964 agreement had been dashed by the arbitration board, whether the decisions of that board were correct or incorrect, and that the only avenue of relief for the Unions was to seek revision of the agreement. It is certainly not unlawful for unions to seek through collective bargaining to change agreements which have been interpreted in a manner which they consider to be adverse to the interests of the employees they represent.

In addition, the Unions had before them the fact that following the 1964 agreement the employment of shopcraft employees on the Burlington

had continued to decline at an alarming rate with a loss of some 1152 employees by 1968 out of a total of 4038, or a decline of approximately 27% (Paragraph 7, Docket Item 19, Vol. 2 of Joint Appendix). The Burlington's brief suggests (page 7, footnote 2) that this decline was not greater than the decline in the numbers of other non-operating railroad employees and was unrelated to the subcontracting out of work. Even if the figure of 23% for non-operating employees cited by the Burlington is accepted, the decline in shopcraft employment was appreciably greater. Moreover, Presidential Emergency Board No. 160 had previously found that a decline in shopcraft employment between 1945 and 1962 on all railroads that was approximately 2% greater than the decline for non-operating employees indicated a clear need on the part of the shopcraft employees to obtain relief from the subcontracting out of railroad work (Appendix B to Docket Item 5, pages 5 and 6, Vol. 1 of Joint Appendix). As shown by the Burlington's own figures (Docket Item 13, pages 2-4, Vol. 2 of Joint Appendix) the decline in employment of shopcraft employees on the Burlington between September 1964 and September 1968 exceeded that of the decline in employment of non-operating employees of the Burlington for the same period by an even greater amount.

Finally, it should be observed that the Burlington's brief (p. 31) concedes, as it must, that practices with respect to the contracting out of railroad work vary from carrier to carrier.

It is therefore respectfully submitted that the Burlington's own brief establishes the fact that the Unions were entirely justified on the basis of the realistic problem confronting them to seek a revision

of their agreement on subcontracting out with the Burlington alone, rather than create a national dispute with 146 other carriers.

III

Reply To The Burlington Argument That Section 8 Of The Norris-LaGuardia Act Did Not Preclude The Granting Of An Injunction

The Burlington argues (Br. pp. 33-34) that even though it violated the Railway Labor Act as the District Court found in making an agreement impossible by insisting to the employees that the subcontracting of work issue was not bargainable, it was nevertheless entitled to an injunction in spite of the prohibitions of the Norris-LaGuardia Act because it was entitled to refuse to bargain as an individual carrier with the Unions. It is respectfully submitted that the issue is not that simple. Section 8 of the Norris-LaGuardia Act, as this Court has found (see page 30 of the Unions' original brief), establishes a "clean hands" doctrine in the granting of injunctions in labor disputes. In the present case, the Burlington did not raise any objection in its counter notices to the Unions about the need for national handling but purported to go ahead and bargain in good faith with the Unions for many months and at the same time insisting that what the Unions requested was not a proper subject for collective bargaining with management. The carrier certainly did not come into court with "clean hands" within the meaning of Section 8.

Moreover, on its own statements, the whole matter could have been disposed of by resumption of negotiations under the auspices of the Secretary of Labor with complete protection to the Burlington against any unauthorized strike. Thus, there was involved no jeopardy to the

public interest or the Railway Labor Act. This is true even if the Unions' counsel did impose a condition of dismissal of the suit, as suggested by the Burlington's brief.

IV

Reply To The Burlington's Argument That
The Unions' Demands Go Beyond The Scope
Of Mandatory Bargaining Under The Rail-
way Labor Act

The Burlington argues (Br. pp. 35-48) that the District Court erred in concluding that the subject matter of the dispute covered matters which are mandatorily bargainable under the Railway Labor Act. It is difficult to take seriously this argument in the face of the Burlington's contentions that the limitations on the contracting out of work have been included in collective bargaining agreements in the railroad industry since World War I and thus meet the test of bargainability established by this Court in Brotherhood of Railroad Trainmen v. Akron & Barberton Belt R. Co., 128 U.S. App. D.C. 59, 385 F.2d 581 (1967), cert. den. 390 U.S. 923. The Burlington's argument that the subject matter of the dispute is not mandatorily bargainable is based upon three grounds.

First, the Burlington contends that the Unions demanded an absolute veto over the contracting out of work within their work classification rules regardless of whether or not it had been previously done on the railroad or whether the railroad has the equipment and personnel to do the work. The Burlington concedes (Br. p. 41) that it is true that the Section 6 notice of the Unions in the present case was almost identical to the 1962 Section 6 notice of the Unions which resulted in the 1964

agreement. The Burlington attempts to distinguish the situation, however, by arguing that the Unions in 1962 did not stand on their original notice, whereas in the present case they "have stood fast on the basic terms of their original notice". An examination of the chronology of the present dispute, which is set forth in paragraph 16, subparagraphs 1 through 68, at pages 14 through 42 of Docket Item 19 and the exhibits attached thereto, Vol. 2 of Joint Appendix, clearly shows that there is no substance to this contention. To begin with, between the time of the serving of the original notice on March 25, 1968, and January of 1969, the Unions were unable to get the Burlington even to discuss the subject of revising the substance of Article II, the subcontracting out provisions of the 1964 agreement, in any manner much less in the manner requested by the Section 6 notice. Throughout this period, the Burlington kept insisting that a revision of Article II was not bargainable and that it would only discuss procedures. When finally the Mediator assigned by the National Mediation Board told the Unions that there was now a "new ball game" and asked for a written proposal, one was submitted (p. 30, Docket Item 19, Vol. 2 of Joint Appendix). This proposal appears as Appendix E to Docket Item No. 5.

Contrary to the claims of the Burlington, this proposal did not forbid the carrier from subcontracting out work. It recognized that the Burlington might determine it "to be necessary" to subcontract work but that this could not be done until the conditions of Section 2 of a revised Article II are met. These conditions required (1) advance notice to the employee representatives; (2) discussions between the Burlington and the employee representatives on the proposed

subcontracting; and (3) arbitration of any dispute. Moreover, on March 8, 1969, the Unions proposed that the carrier could decide that it was necessary to subcontract work of a type currently performed by employees, but if it did so it should give notice of intent to employee representatives, supporting data, and discuss the matter with employee representatives. If there was a dispute, the Burlington should proceed to subcontract work and the Unions could submit the dispute to arbitration. This would mean that the Burlington would run the risk that the arbitration award would be against it and it would have violated the agreement (subparagraph 65 of paragraph 16 of Docket Item 19, pp. 39-40, Vol. 2 of Joint Appendix).

At that time the Burlington was proposing to the Unions that the dispute be settled, not by revising the contracting of work provisions, but by a job guarantee by the Burlington. However, the Unions were not willing to substitute a job guarantee for a revision of the subcontracting of work provisions. Their position consistently has been that they are interested solely in the employees performing the carrier's work within their job classifications and are not asking the railroad to create jobs for which there is no work. The acceptance of the job guarantee would put the Unions in the position where the railroad could subsequently contend that they were practicing "featherbedding".

There is nothing in the document to even remotely suggest that bargaining of the subject matter was not proper under the Railway Labor Act, even if it had not previously been the subject of collective bargaining under that statute. The Burlington's strained effort to twist the decision in Fibreboard Paper Products Corp. v. National Labor

Relations Board, 379 U.S. 203, which was rejected by the District Court, demonstrates the lack of merit in the carrier's position.

Second, the Burlington also argues (Br. pp. 45-46) the subject matter of bargaining was illegal because the Unions' demands would give them a veto over the acquisition of virtually all the equipment the railroad uses. This is a factual contention which was rejected by the District Court and properly so as shown by the documents cited above.

Third, the Burlington argues that the Unions' demands were illegal because they gave the employees unrestricted discretion to determine the consequences in the event of alleged violations of the proposed new agreement (Br. p. 47). This proposal (page 2 of Appendix A to Exhibit B of Docket Item 1, Vol. 1 of Joint Appendix) has clearly been misconstrued by the Burlington. It simply meant that if the Burlington did the acts set forth therein without giving advance notice to the employee representatives, there was a violation of the agreement per se so that the carrier must recognize the claim based on such actions. In the context of the collective bargaining agreement and the other provisions of the proposal, it would have to be a claim by an employee engaged in the work involved for compensation for the work taken away without the notice. Moreover, any question about the limitations could easily be clarified in the final language of the agreement if the carrier was willing to agree to the principle. It was an effort to protect the employees against the failure of the operating personnel of the Burlington to give advance notice of subcontracting of work, a violation of the existing agreement, which the

Burlington conceded during the negotiations had occurred (paragraph 8, pp. 8-9 of Docket Item 19, Vol. 2 of Joint Appendix). Moreover, pages 39 and 40 of Docket Item 19 show that in the March 8, 1969, proposal of the Unions, the provision complained of was not included. That proposal was based on simply drawing lines through those portions of Article II which the Unions wished eliminated.

The whole thrust of the Burlington's brief is an effort to blame everything on the Unions. The fact of the matter is, however, that the only actions found by the District Court as making ultimate agreement impossible were those of the Burlington and not of the Unions (page 9 of Docket Item 24, Vol. 2 of Joint Appendix).

CONCLUSION

It is respectfully submitted that on the basis of the points and authorities submitted by the parties in their briefs the District Court erred as a matter of law in granting the preliminary injunction.

Respectfully submitted,

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Appellee,

v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,
Appellants.

NO. 22993

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellant,

v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,
Appellees.

Appeals From A Judgment Of The United States District Court
For The District Of Columbia

BRIEF OF RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, ET AL., APPELLANTS
IN CASE NO. 22966 AND APPELLEES IN CASE NO. 22993

United States Court of Appeals
for the District of Columbia Circuit

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 22966

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellee,

v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,
Appellants.

NO. 22993

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellant,

v.

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SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,
Appellees.

Appeals From A Judgment Of The United States District Court
For The District Of Columbia

BRIEF OF RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, ET AL., APPELLANTS
IN CASE NO. 22966 AND APPELLEES IN CASE NO. 22993

Case No. 22966 involves an appeal by the Railway Employees' Department, AFL-CIO, System Federation No. 95 thereof, the International Association of Machinists and Aerospace Workers, the International

Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, the Sheet Metal Workers' International Association, the International Brotherhood of Electrical Workers, The Brotherhood Railway Carmen of United States and Canada, and the International Brotherhood of Firemen and Oilers (hereinafter referred to collectively as the "Unions") from a preliminary injunction issued by the District Court on April 9, 1969, enjoining these organizations from striking after the exhaustion of the procedures of the Railway Labor Act in a major dispute between the Unions and the Chicago, Burlington & Quincy Railroad Company (hereinafter referred to as the "Burlington") concerning proposed revision of rules with respect to the subject of contracting out of Burlington work performed by Burlington employees represented by the Unions. The Burlington has also filed an appeal from such order in Case No. 22993.

This Court has jurisdiction to entertain the appeal of the Unions in Case No. 22966 under Title 28, Section 1292(a)(1), of the United States Code.

ISSUES PRESENTED FOR REVIEW

The appeals in these two cases present for review the following issues:

1. Whether the District Court erred in granting the Burlington Railroad an injunction against the six Unions under circumstances where the Department of Labor had intervened in the dispute and had obtained the agreement of the parties to resume negotiations under the auspices of the Labor Department and to continue such negotiations until the dispute was resolved and to not terminate such negotiations except by five days' advance notice to the Secretary and the other party.

2. Whether the District Court erred in prohibiting the six railway labor organizations here involved from striking after the exhaustion of the procedures of the Railway Labor Act in a major dispute between those Unions and the Burlington concerning proposals to revise an existing collective bargaining agreement between the parties covering the subcontracting out of Burlington work performed by the employees represented by the Unions on the ground that such a revision must be negotiated on a national basis with 147 railroads.

3. Whether the District Court erred in granting the Burlington an injunction against the Unions in light of its finding that the railroad had violated the Railway Labor Act by making agreement between the parties impossible through its illegal contention that the subject matter of the dispute was not bargainable under the Railway Labor Act.

4. The further issue is presented in Case No. 22993 as to whether the injunction granted by the District Court against the six Unions should be affirmed on the grounds urged by the Burlington to the District Court that the subject matter of the dispute between the Unions and the Burlington is not a proper subject for collective bargaining under the Railway Labor Act.

The pending cases have not been previously before this Court.

REFERENCE TO RULINGS

The District Court issued its order temporarily restraining the Unions from conducting a strike against the Burlington on March 13, 1969. On April 9, 1969, the District Court entered its order granting the motion of the Burlington Railroad for a preliminary injunction against the Unions and its "Findings Of Fact" and "Conclusions Of Law" in support thereof. This document, entitled "Preliminary Injunction",

is reproduced as Docket Item 24, Volume 2 of Joint Appendix.

STATEMENT OF THE CASE

A. Nature of the Case, the Course of Proceedings, and Its
Disposition in the Court Below

This litigation grew out of a major dispute between the six railway labor Unions listed above and the Burlington concerning proposals of the six Unions to revise the provisions of a collective bargaining agreement between the Unions and the Burlington governing the contracting out of Burlington work performed by employees of the Burlington who are members of the Unions. As set forth below, the procedures provided by the Railway Labor Act for the resolution of this dispute were exhausted by the parties without resolving the dispute. Under these circumstances, the six Unions were free to conduct a strike against the railroad. The Burlington, however, on March 12, 1969, filed a complaint in the District Court for declaratory and injunctive relief against such a strike on the alleged grounds that a strike would violate the Railway Labor Act in that (1) the subject matter of the dispute was not a proper subject for bargaining under the Railway Labor Act; (2) the Unions did not bargain in good faith; and (3) the Unions were required by the statute to negotiate the subject matter of the dispute with 147 railroads on a nationwide basis. (Docket Item 1, Volume 1 of Joint Appendix.) At the same time, the Burlington filed a motion for a preliminary injunction (Docket Item 4, Volume 1 of Joint Appendix). The defendant Unions opposed the Burlington's motion for a preliminary injunction and in addition moved the court for summary judgment in defendants' favor pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket Item 19, Volume 2 of Joint Appendix).

On March 12, 1969, the District Court granted the motion of the Burlington for a temporary restraining order against the Unions, which was continued by consent of the parties until April 10, 1969. A hearing on the motion of the Burlington for a preliminary injunction was conducted by the District Court on April 3, 1969. That afternoon counsel for the parties were informed that the Secretary of the Department of Labor had expressed a desire to intervene in the controversy for the purpose of bringing the parties together in further negotiations under his auspices to resolve the dispute. Representatives of each of the parties also informed their respective counsel that agreement had been reached with a representative of the Secretary of Labor to execute a Memorandum of Understanding providing for the parties to confer under the auspices of the Secretary in a good faith effort to resolve the dispute and such conferences could be terminated by either party only upon the giving of five days' notice to the Secretary and to the other party. A copy of this Memorandum of Understanding is attached hereto as Appendix A.

Under these circumstances, counsel for each of the parties conferred with District Judge Robinson on April 4, 1969. No transcript of this meeting was made. The Unions suggested to the court that there was no necessity or legal basis for the court to rule on the motion for a preliminary injunction in light of the agreement which had been reached between the parties and the Secretary of Labor because the Burlington could no longer validly claim that it would suffer any irreparable injury to serve as a basis for the grant of equitable relief by the District Court. The Unions further advised the District

Court that the grant of a preliminary injunction under the prevailing circumstances would prejudice the conduct of any future negotiations under the auspices of the Department of Labor.

The District Court advised counsel for the parties that it was the court's intention to proceed to resolve the issues presented by the preliminary injunction and that it would grant the Burlington's motion therefor. Thereafter, the Burlington refused to execute the Memorandum of Understanding presented by the Secretary of Labor. The Burlington did, however, agree to participate in further conferences with the Unions without any such agreement and such conferences are being held.

Thereafter, on April 9, 1969, the District Court granted the Burlington's motion for a preliminary injunction against the six Unions restraining them from authorizing, calling, encouraging, or engaging in a strike or work stoppage against the Burlington in the dispute. The District Court's order provided that "said preliminary injunction shall be in force until such time as the parties to this lawsuit have bargained within the dictates of the Railway Labor Act and the conclusions of law contained herein, and until the procedures of the Railway Labor Act have been fully exhausted." This order also denied the motion of the Unions for summary judgment without prejudice. The injunction was based upon a finding that the subject matter of the dispute between the six Unions and the Burlington could only properly be negotiated under the Railway Labor Act in a multi-carrier negotiation involving the six Unions and

approximately 147 railroads.^{1/} At the same time, the District Court rejected the contentions of the Burlington that the subject matter of the dispute was not a proper subject of collective bargaining under the Railway Labor Act and found that the Burlington itself had violated the Railway Labor Act in making agreement between the six Unions and the Burlington impossible by its legally unsound contentions. The court reached no conclusion on the issue of "good faith" bargaining on the ground that it was not a crucial issue. (Docket Item 24, Volume 2 of Joint Appendix.)

On April 14, 1969, the Unions filed their Notice of Appeal from the District Court's order of April 9, 1969 (Docket Item 4, Volume 1 of Joint Appendix), and this appeal was subsequently docketed in this Court as Case No. 22966 on April 21, 1969. On April 22, 1969, the Burlington also filed a Notice of Appeal from the order of the District Court, which was docketed in this Court as Case No. 22993 (Docket Item 28, Volume 2 of Joint Appendix).

B. Statement of the Facts

The first step provided by the Railway Labor Act for employees or carriers desiring to change or revise existing collective bargaining agreements is the requirement of Section 6 thereof (45 U.S.C.A., Section 156) that the party desiring such a change shall give a written

^{1/} Although the form of the injunction is a "preliminary injunction", the order of the District Court actually disposes of the legal issues on a permanent basis and should be so treated by this Court.

notice to the other party of an intended change in the agreement affecting rates of pay, rules, or working conditions. In this case, the six Unions which represent the shopcraft employees of the Burlington served such a Section 6 notice on the Burlington on March 25, 1968 (Exhibit B to complaint, Docket Item 1, Volume 1 of Joint Appendix), proposing revisions in Article II of the existing collective bargaining agreement dated September 25, 1964, between the six Unions and the Burlington dealing with the subject of contracting out of work by the Burlington performed on the property of the railroad by the employees represented by the Unions, and Article VI of such agreement establishing procedures for the resolution of disputes between the Unions and the Burlington concerning the contracting out of said work (Exhibit A to the complaint, Docket Item 1, Volume 1 of Joint Appendix). On March 29, 1968, the Burlington submitted to the six Unions a counter proposal to revise the existing agreement by eliminating therefrom all rules, regulations, and interpretations and practices which restricted the Burlington's contracting out of such work (Exhibit C to complaint, Docket Item 1, Volume 1 of Joint Appendix). It will be observed that the Burlington's communication and counter proposal made no claim to the effect that the subject matter of contracting out of work by the Burlington was not a proper subject of collective bargaining under the Railway Labor Act or that the six Unions must bargain with all of the approximately 147 railroads who were also parties to the agreement of September 25, 1964.

The subject matter of the Unions' notice and of the Burlington's counter proposal was not a new subject matter in the railroad industry

generally or between the Unions and the Burlington. Nor was this the first "major" labor dispute concerning such subject matter. The contracting out by railroads of work performed by their shopcraft employees, the impact upon these employees, and upon the public interest, had been a matter of dispute between employees and railroads and a subject of collective bargaining agreements for at least a decade prior to the present dispute. The threat to the job security of shopcraft employees and the impact of railroad contracting out of shopcraft work to be performed outside of the railroad industry upon the public interest by the draining of the pool of skilled labor from the railroad industry had by the middle 1950's created a dispute between these same shopcraft Unions here involved and the nation's largest railroad, the Pennsylvania Railroad Company. This dispute culminated in a strike of approximately two weeks in length in September of 1960, which ended with the negotiation of an agreement between these same Unions and the Pennsylvania which restricted in varying degrees the subcontracting out of the work of repairing, building, rebuilding, and upgrading of cars and locomotives and the procurement of components or parts of equipment assembled or unassembled used in such work, which became effective on or about October 15, 1960 (Paragraph 4 of affidavit of C. R. DeHague, et al., Docket Item 19, Volume 2 of Joint Appendix).

Thereafter, in October of 1962 the Unions here involved served Section 6 notices on approximately 147 line-haul railroads, including the Burlington, terminal and switching companies (excluding the Pennsylvania, the Southern, and the Florida East Coast Railway), seeking revisions of their collective bargaining agreements with these carriers

to include, inter alia, restrictions on the subcontracting out of work by the railroads involved and procedures for the resolution of disputes with respect to this subject. The railroads, including the Burlington, served counter proposals to give them complete freedom of action in this area. These notices gave rise to a major labor dispute which was processed through the procedures of the Railway Labor Act without resolution and ultimately threatened a nationwide railroad strike.

Upon the recommendation of the National Mediation Board, the then President of the United States appointed Emergency Board No. 160 to investigate and report on this dispute. The Emergency Board rendered its report on or about August 7, 1964. This report set forth the essential framework in which this type of dispute arises (Appendix B to affidavit of B. G. Upton, Docket Item 5, Volume 1 of Joint Appendix). The report points out that for a period of 20 years prior thereto sweeping technological and organizational changes had adversely affected employment of railroad workers, and that while the thrust of such change and adverse effect had been felt by all classes of workers "its impact on shopcraft employment has been the most shattering". This was evidenced by a drop in average shopcraft employment of approximately 367,000 in 1945 to below 150,000 in the early 1960's, or a drop of approximately 60%. The Emergency Board further found that this situation was not solely a matter of union concern in terms of the job security of the employees they represent, but also involved the public interest because "the public interest would be served by measures which would help to arrest the decline in railroad shop facilities. To the extent that subcontracting has played a part in

the steady erosion of shop employment it has contributed to the draining away of a skilled labor pool in the railroad industry". The Presidential Emergency Board went on to cite the shortage of railroad freight cars as evidence of the inability of the railroad industry to meet the nation's needs for transportation which the Board found had aggravated both domestic and foreign problems and which was caused at least in part by its abandonment of its shopcraft facilities of repairing, building and rebuilding of cars. The Presidential Emergency Board concluded that the "national interest would be better served by maintaining the capacity of the railroad industry to keep its equipment in good working order and to expand its operations as needs require".

The Presidential Board therefore recommended what it termed "a modest step forward" in the accommodation between the desires of the shopcraft unions to restrict the subcontracting out of shopcraft work and the desires of the railroads to maintain complete freedom in this area. These recommendations provided in essence (a) that subcontracting should only be done under certain circumstances there enumerated, (b) that the railroads should give notice of intended subcontracting to the representatives of the employees along with the reasons therefor and supporting data, (c) that the employee representatives should have an opportunity to discuss the intended subcontracting out with the railroad, and (d) that disputes over the application of the rule should be submitted to expedited arbitration. These recommendations essentially followed the formulas arrived at by the shopcraft unions and the Pennsylvania Railroad in the negotiations in the late 1950's culminating in the 1960 strike (Paragraphs 4 and 5 of affidavit of G. R. DeHague, Docket Item 19, Volume 2 of Joint Appendix).

Following the submission of the Presidential Emergency Board report, negotiations were resumed between the shopcraft Unions here involved and the railroad carriers involved in that dispute, including the Burlington, which resulted in the execution on September 25, 1964, of an agreement designated "Mediation Agreement" because it was executed under the auspices of the National Mediation Board, effective November 1, 1964. This agreement contained in Article II thereof provisions which restricted the subcontracting out by railroads, including the Burlington, of work set forth in the classification of work rules of the Unions involved "except in accordance with the provisions of other Sections thereof." These Sections provided criteria to determine the need for subcontracting the work, for advance notice and submission to Union representatives of intention to subcontract work, for conferences and discussions between the railroad involved and the Union representatives with respect thereto, and for resolution of disputes arising out of the application of Article II by a Special Board of Adjustment established by Article VI of said agreement. The provisions of Article II are set forth at pages 9-10 of Exhibit A to complaint, Docket Item 1, Volume 1 of Joint Appendix.

Under the operation of this agreement, there was a continued erosion of shopcraft work on the Burlington contrary to the interest of those employees and contrary to the public interest as set forth by Emergency Board No. 160. The employment of Burlington shopcraft employees dropped during this period by some 1152 employees out of a total of 4038, or a decline of approximately 27%. In addition, the shopcraft Unions experienced on the Burlington a type of harassment

and interpretations and applications of the agreement not experienced on other railroads. In the opinion of the shopcraft Unions the Burlington insisted upon interpretations and applications and practices which were simply a projection of its view that it should not be restricted in any manner in subcontracting out of work and indicating a clear intent to ignore the restrictions of the 1964 agreement. This carrier practice gave rise to more than 100 claims and disputes in the application of the 1964 agreement with respect to the contracting out of shopcraft work. In the opinion of the Unions, the disputes procedure of the 1964 agreement was never intended to cope with this type of wholesale disregard of the restrictions contained in the 1964 agreement but only with the occasional dispute which would inevitably arise out of the good faith application of the agreement by both parties. There can be no question with respect to the Burlington's practices because during the conferences upon the Unions' proposals the principal Burlington officer involved admitted to the Union representatives the existence of the abuses of which they complained and on November 19, 1968, wrote to the operating personnel of the Burlington stating categorically to them that it had been brought to his attention that the agreement had been abused and advising them that "This is embarrassing to this department, to say the least, and certainly has not been conducive of good labor relations with the Shop Craft Organizations". A copy of this letter was furnished to the Union representatives and is quoted in paragraph 8 of the affidavit of G. R. DeHague, et al. (Docket Item 19, Volume 2 of Joint Appendix). The letter had little, if any, effect upon alleviating the abuses.

It was with this background that the shopcraft Unions here involved determined in the early part of 1968 that it was necessary for them to seek from the Burlington a revision of the 1964 agreement as applied by the Burlington in order to accomplish the purposes of job security and the public interest enumerated by Presidential Emergency Board No. 160 in 1964. They therefore served the Section 6 notice referred to above for revision of the agreement, which notice is here involved.

This notice on its face did not attempt, as the Burlington has suggested, to prohibit the subcontracting out of work by the carrier or to require that the work involved be done only by agreement with the Unions. It recognized that there would be subcontracting but sought to limit that subcontracting, as Emergency Board No. 160 had suggested, to "necessary" situations, to prevent the abuse in the application of the criteria set forth in Article II, Section 1 of the 1964 agreement, by eliminating the criteria, to make certain that the Burlington did give the notice of intended subcontracting out of work, and discuss the proposal with the Unions by employing a contract penalty for failure to do so. The proposals left intact the disputes machinery in the event that the Unions disputed the Burlington's intent to subcontract out and the Burlington did not agree. The Burlington's proposals, on the other hand, on their face proposed to eliminate any restriction and to return to the situation on the Burlington as it was prior to 1964.

Section 6 of the Railway Labor Act requires conferences between the representatives of the parties on proposals of intended changes. Over the period of the next four months the Unions experienced nothing

but delays on the part of the Burlington and nothing even remotely approaching a bona fide or serious effort on the part of the Burlington to negotiate on the subject matter of the notice. Although the Burlington's original counter proposal and acknowledgement of the notice from the Unions set forth no legal objections to the negotiations and collective bargaining on the proposal, the Burlington at the outset of the conferences and throughout the period of the attempted negotiations, as shown by its complaint to the court below, objected to any negotiations unless the Unions extended the dispute to each of the remaining 146 rail carriers with whom separate agreements were negotiated in 1964. As a consequence, the Unions were unable to conduct conferences such as contemplated by the Railway Labor Act, and on June 17, 1968, were forced to seek the services of the National Mediation Board to mediate the dispute in accordance with the provisions of Section 6 of the statute, and to authorize the employees involved to vote on a strike ballot so as to emphasize the seriousness of the situation to the Board. Although the Burlington objected to the Board's docketing of the dispute as a mediation case, a Mediator was assigned and further conferences by the parties were held with his assistance until February 4, 1969, on which date the National Mediation Board terminated its mediation services. As required by Section 5 of the Railway Labor Act, the Board proffered voluntary arbitration to the parties. The Unions considered the proffer and respectfully declined because of the subject matter involved. The Burlington thereafter wrote to the Board stating that it would have been willing to arbitrate providing it could have reached

an agreement with the Unions upon the subject matter of the arbitration (Paragraphs 15 and 16 of affidavit of G. R. DeHague, et al., pages 13-14, Docket Item 19, Volume 2 of Joint Appendix).

The Railway Labor Act provides that once the Board has terminated its mediation services and the parties have not agreed to voluntary arbitration of the dispute, the only remaining procedure under the Act is an investigation and submission of a report by a Presidential Emergency Board if the statutory conditions prerequisite to the establishment of such an Emergency Board have been found. The Act limits the establishment of such a Board to situations where the National Mediation Board finds and so informs the President that the dispute involved threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation services. The National Mediation Board made no such finding and no Emergency Board was established to investigate and report on the involved dispute.

In the absence of such Board, the only other statutory restriction on the use of self-help by either party to the dispute is the provision in Section 5, First, of the Act (45 U.S.C.A., Section 155, First), that for a period of 30 days after termination of the Board's mediation services no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose. Under this restriction, the parties were remitted to self-help not later than March 6, 1969.

At the request of the Burlington, the Unions engaged in conferences with the carrier following the termination of mediation services by the

National Mediation Board through March 10, 1969 (Paragraph 16, subparagraphs (59)-(68) of affidavit of G. R. DeHague, et al., Docket Item 19, Volume 2 of Joint Appendix). Thereafter, the Burlington in anticipation of a strike filed its complaint on March 12, 1969, in the District Court.

ARGUMENT

I

The District Court Erred In Granting A Preliminary Injunction In Light Of The Intervention Of The Secretary Of Labor Providing For Good Faith Efforts To Resolve The Dispute Between The Parties Under His Auspices

As set forth above at pages 5 and 6, the Secretary of Labor decided to intervene in this dispute prior to the action of the District Court in granting a preliminary injunction. This intervention produced agreement between the parties on a Memorandum of Understanding (a copy of which is attached hereto as Appendix A), providing for conferences between the parties under the auspices of the Secretary of Labor in a good faith effort to resolve the dispute between them. This agreement also provided that such conferences could not be broken off except upon five days' advance notice to the Secretary and to the other party. The District Court was informed on April 4, 1969, of this agreement and it was suggested that under the circumstances a preliminary injunction was not only unnecessary but legally improper. However, the District Court informed counsel for the parties that it intended to issue a preliminary injunction. Immediately thereafter, the Burlington refused to formally execute the agreement and the effective intervention of the Secretary of Labor to resolve the dispute was destroyed. The Unions submit that under the circumstances the legal prerequisites for the

issuance of a preliminary injunction were not present.

The requirements for the issuance of a preliminary injunction, as laid down by this Court, include, among other things, (1) a showing that the party requesting such relief will be irreparably injured if it is not granted; (2) a showing that the grant of such injunction will not produce irreparable injury to the other party; and (3) a showing that the grant of a preliminary injunction is in the public interest. Virginia Petroleum Jobbers Association v. Federal Power Commission, 104 U.S. App. D.C. 106, 259 F.2d 921 at page 925 (1958). The intervention of the Secretary of Labor in this dispute made it impossible for the Burlington to establish these prerequisites for the issuance of a preliminary injunction. First, paragraph 11 of the complaint of the Burlington bases its claim of irreparable injury on the threat of a strike by the Unions involved in the dispute (Docket Item 1, Volume 1 of Joint Appendix). The intervention of the Secretary of Labor and the agreement which he proposed and which had been accepted by the parties but not yet signed on April 4, 1969, included a provision that the parties would cooperate fully with the Secretary "in an effort to resolve these issues without interruption of essential transportation service". Thus, this agreement precluded any strike or threat of a strike by the Unions involved without a termination of the agreement, which could be done only upon the giving of five days' notice to the Secretary and to the other party. If it be assumed arguendo that the conferences under the auspices of the Secretary of Labor would not have produced a resolution of this dispute, the Burlington would have had five days' notice of any future strike

threat which would have given it ample time to obtain temporary or preliminary injunctive relief from the District Court. On April 4 it clearly was not faced with the threat of a strike producing irreparable injury.

Second, the issuance of an injunction under these circumstances obviously produced serious injury to the Unions and to the employees they represent with respect to any negotiations that might thereafter be conducted under the auspices of the Secretary of Labor. Armed with an injunction holding that it did not have to bargain with the Unions, there is obviously no incentive on the part of the Burlington to make any reasonable effort to reach an agreement in the dispute.

Third, the grant of the preliminary injunction is obviously adverse to the public interest. The question of the extent to which a railroad may contract out shopcraft work is not solely a matter of the interest of the employees in protecting their work and their jobs. As shown by the findings of Presidential Emergency Board No. 160, which considered this problem in 1964 (pages 10-12 above), it is in the public interest to arrest the decline in railroad shop facilities because of the impact of such decline in draining away a skilled labor pool in the railroad industry. The Presidential Emergency Board found, inter alia, that one of the effects of railroad abandonment of shopcraft facilities has been a contribution to the perennial shortage of railroad freight cars in this country which, in turn, has aggravated both domestic and foreign problems. Presidential Emergency Board No. 160 found that national interests would be better served by maintaining the shopcraft capacity of the railroad industry. The intervention of

the Secretary of Labor in this dispute gave hope that these public interest considerations could be accomplished without any injury to railroad economic plans through the conduct of good faith negotiations under the auspices of the Secretary of Labor. On the other side of the coin, the fact that the National Mediation Board had not made the findings required by Section 10 of the Railway Labor Act as a condition precedent to the appointment of a Presidential Emergency Board, had not recommended the appointment of such a board to the President, and the President had not, in fact, appointed such a board clearly shows that a threat of a strike against the Burlington was of substantially less consequence in terms of the public interest than that the dispute be resolved under the guidance of the Secretary of Labor.

The grant of the preliminary injunction completely destroyed this prospect by the elimination of any incentive on the part of the Burlington to reach a reasonable accommodation with the Unions. This is clearly shown by the fact that as soon as the District Court informed counsel that it would issue an injunction in spite of the intervention of the Secretary of Labor, the Burlington refused to formally execute the Memorandum of Understanding although the representative of the Unions was in the office of the Secretary for that purpose at that time.

It is difficult to perceive a more gross abuse of judicial discretion than the insistence of the District Court upon the issuance of a preliminary injunction under these circumstances.

II

The District Court Erred In Concluding That As A Matter Of Law The Unions Are Prohibited From Bargaining With The Burlington Concerning The Subcontracting Out Of Burlington Work But Must Bargain With 147 Carriers On A Nationwide Basis

The Section 6 notice served by the Unions upon the Burlington and the Burlington's counter notice dealt solely with rules relating to the contracting out of work by the Burlington then performed on the property of the Burlington by employees of that carrier represented by the Unions. In spite of this fact, the District Court concluded as a matter of law that the Unions were prohibited by the Railway Labor Act from negotiating a revision of the existing agreement covering the contracting out of such work with the Burlington alone, but must serve notices on all approximately 147 railroads parties to the 1964 agreement on this subject and negotiate a nationwide contract with them. The court therefore concluded that the Unions' Section 6 notice to the Burlington was legally incorrect under the Railway Labor Act and that the Unions must be enjoined from conducting any strike with respect to such matter. The District Court set forth as reasons for this conclusion (1) that the subject matter of the dispute between the Unions and the Burlington is one that has been handled historically on a multi-employer basis as evidenced by the agreement of September 25, 1964, and (2) that the Unions themselves continue to recognize that multi-employer bargaining is appropriate as evidenced by the fact that most of the Unions involved had served national notices on most of the nation's railroads which include proposals regarding "contracting out" which gave rise to national bargaining on this issue which is now in

progress (Docket Item 24, pages 7-8, Volume 2 of Joint Appendix). The Unions submit that the District Court's conclusion is in error.

This Court set forth the applicable standards for determining whether a proposed contract under the Railway Labor Act must be bargained on a multi-carrier basis in its decision in Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co., 127 U.S. App. D.C. 298, 383 F.2d 225 (1967). In that case this Court rejected the carrier argument that national handling can be demanded by a carrier as a matter of right as well as an argument of the railway labor organization there involved that national handling is always voluntary. This Court spoke as follows on the statutory requirements (page 229):

"The Railway Labor Act does not universally and categorically compel a party to a dispute to accept national handling over its protest. Such bargaining is certainly lawful, however. Whether it is also obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements. The history and realities of crew consist bargaining in this industry impel the conclusion that mass handling was not required by the statute for bargaining on that issue."

An application of this standard to the dispute here involved requires a rejection of the Burlington's contention that the Unions' proposals must be bargained on a national basis.

First, there was a sound reason applicable only to the Burlington for negotiations at this time for a revision of the 1964 agreement on contracting out of work as that agreement applied to the Burlington. By 1968 the Unions had an experience record with respect to the application of the 1964 agreement, which indicated to them a clear need to revise and tighten both the substance of the agreement as well as the procedures thereunder on the Burlington not applicable to other carriers

parties thereto. This experience is set forth in paragraphs 8 and 9 of the Unions' affidavit in the District Court, which read in pertinent part as follows (Docket Item 19, pages 8-9, Volume 2 of Joint Appendix):

"8. That in addition the shopcraft unions representing the shopcraft employees of the Burlington and the employees themselves were faced during the period on and after September 1964 by the management of the Burlington with actions and practices which these unions consider to be a bad faith application and interpretation of the purposes of the mediation agreement of September 25, 1964; that these practices and interpretations made it clear that the management of the Burlington had not reconciled itself to the findings of Presidential Emergency Board No. 160 that the public interest required limitations upon the subcontracting out of work which could be performed upon the property of the Burlington, in spite of the 1964 agreement, continued to insist both in practice and in words on an alleged managerial right to do as it pleased; thus the unions and the employees they represented were continuously faced with instances of the carrier contracting out work and not giving any notice as required by Article II; by the carrier insisting on narrow and technical interpretations of the agreement so as to exclude from the scope thereof subcontracting of work; * * * that more than 100 claims of violations of the agreement resulted; that this wholesale disregard for the requirements of Article II of the agreement of 1964 and the continued insistence of the Burlington upon an alleged managerial freedom to do as it pleased in this area without regard to the interest of its loyal employees who had acquired an equity in this work through many years of service and in complete disregard of the public interest found by Presidential Emergency Board No. 160, was acknowledged by the management of the Burlington during the conferences held between representatives of the unions here involved and representatives of the Burlington during the course of the present labor dispute; that this acknowledgement is evidenced by a letter dated November 19, 1968, to operating personnel of the Burlington, a copy of which was furnished to the representatives of the employees, which read in pertinent part as follows:

'It has recently been brought to my attention by the Shop Craft Organizations that certain work has been subcontracted without proper notice to the Organizations. This is embarrassing to this department, to say the least, and certainly has not been conducive to good labor relations with the Shop Crafts. I do not want this Carrier subjected to further criticism for not complying with the terms of Mediation Agreement A-7030.

'Please make a definite lineup with the appropriate officers under your jurisdiction, and between the departments involved, so there will be no failure to fulfill our obligations under Mediation Agreement A-7030.'

That, however, this letter failed to have any effect upon the situation and it has been wholly disregarded leading to the conclusion either that the letter constituted window dressing in the management's dealing with its employees or that the management is simply ignoring the recommendations of its labor representatives.

"9. That while the unions here involved have not been wholly satisfied with the impact of the mediation agreement of September 25, 1964, upon shopcraft employment on the nation's railroads as a whole, i.e. the 147 carriers parties to that agreement, it has not encountered on these other carriers the management attitude of wholesale disregard of the requirements of the agreement and that the management intends to do as it pleases regardless of such requirements; * * *."

There was thus no need for the Unions to create a national dispute in order to correct the situation on the Burlington and indeed it would have been unrealistic to do so.

The District Court, however, rejected the Unions' reasons for negotiations with the Burlington alone on the ground that the 1964 agreement established an arbitration board to decide grievances and that "alleged abuses of the terms of the agreement do not justify abandonment of the agreement itself" (Docket Item 24, page 8, Volume 2 of Joint Appendix). This is not a proper ground for foisting national bargaining upon the Unions. The District Court's characterization of the Unions' proposals as an "abandonment of the agreement" is inaccurate. While that characterization clearly applies to the Burlington's counter proposal, the Unions' Section 6 notice proposed to tighten up both the restrictions on the substance of contracting out of work as well as the procedures for arbitrating disputes concerning carrier actions in this area. Moreover, the fact that an agreement has provisions for arbitrating

grievances and disputes thereunder does not prohibit proposals by Unions to revise such agreements which have proved unsatisfactory to them. If this were true, every labor agreement in the country containing arbitration provisions would not be subject to renegotiation. In addition, the District Court's reasoning ignores the fact that the Unions' Section 6 notice included proposals to revise the arbitration procedures themselves so as to make them more effective. Finally, the affidavit of the Union parties before the District Court shows that the arbitration procedures of the 1964 agreement, as applied to the Burlington, have proved inadequate to cope with the actions of the Burlington management since these provisions were based upon an assumption that the agreement would be applied in good faith and that only a few disputes would arise. This portion of the Unions' affidavit reads as follows (Docket Item 19, pages 9-10, Volume 2 of Joint Appendix):

"* * * that the procedures incorporated in the mediation agreement of September 25, 1964, for the settlement of disputes arising out of the application of Article II thereof restricting the Burlington's right to subcontract work have proved inadequate to cope with the actions of a management so oriented; that these provisions were based upon the assumption that the agreement would be applied in good faith by both parties; that in spite of such good faith interpretation and application of the agreement there could arise an occasional good faith dispute and that the procedures for the settlement of such disputes would be adequate; that, however, this assumption has been destroyed by the bad faith interpretation and application of the agreement by the Burlington so that the procedures have proved totally inadequate to protect the interest of the employees and the public interest as found by Presidential Emergency Board No. 160."

Second, the Burlington, as well as the other signatories to the 1964 agreement on subcontracting out of work, agreed that the contract was to be construed and treated as a separate contract between the

Unions and each of the carriers involved. This provision appears in Article VII of the 1964 agreement which reads in pertinent part as follows (Exhibit A to complaint, Docket Item 1, Volume 1 of Joint Appendix):

"This agreement shall be construed as a separate agreement by and on behalf of each of said carriers and its employees represented by each of the organizations signatory hereto."

Thus, the carriers themselves, including the Burlington, have recognized there were individual agreements, which could be treated as such by the parties, which necessarily include revision of these agreements with each carrier as experience dictates the need therefor.

Third, such a recognition and provision was necessary because of the varying practices among the carriers with respect to contracting out of work. Emergency Board No. 160, which considered this subject in 1964, emphasized the lack of uniformity among railroads with respect to contracting out of work and as a consequence thereof the lack of feasibility in proposals which would have the effect of requiring carriers who had scrapped repair facilities to restore or re-establish them. For this reason the Board recommended what it termed "a modest step forward" of general applicability which would have the effect of generally arresting the decline in railroad shop facilities. The Board's findings on this point read as follows (Exhibit B to Docket Item 5, page 13, Volume 1 of Joint Appendix):

"From the evidence and testimony submitted this Board is impressed with the great diversity of practice among the various carriers. Some do all or almost all of their own building, upgrading and repairing of equipment; others have abandoned or consolidated their shop facilities; while still others have relied on outside industry to perform a major part of their equipment maintenance. Although it is not

possible or feasible to recommend that carriers which have scrapped their repair facilities should restore or re-establish them, this Board is of the opinion that the public interest would be served by measures which would help to arrest the decline in railroad shop facilities."

It is just this "diversity of practice among the carriers" which has continued under the 1964 agreement which has required the Unions to negotiate a revision in their separate agreement on subcontracting out with the Burlington.

Fourth, in the Atlantic Coast Line case, this Court found that national handling was not required even in the situation where similar proposals were served at about the same time by the unions involved upon a number of carriers. In the present case, the Unions have served a Section 6 notice for revising the subcontracting out rule only upon the Burlington and upon no other carrier. The District Court found that most of the unions involved had served another Section 6 notice on most of the nation's railroads covering subcontracting of shopcraft work giving rise to current national bargaining on the issue and thereby recognizing the need for national handling thereof. (Docket Item 19, page 8, Volume 2 of Joint Appendix.) However, the finding is clearly erroneous and based upon a misunderstanding of a statement made in the hearing before the District Court by counsel for the Burlington. This statement, which appears at pages 43 and 44 of Docket Item 27, Volume 2 of Joint Appendix, reads as follows:

"And today, if the Court please, they are in session negotiating on new notices, and one of the notices of the carriers deals with this very issue, and they have accepted national handling." (Emphasis supplied.)

What counsel was referring to is that in a national movement of the Unions for wage increases, the carriers have attempted to counter with

the wholly unrelated counter proposal to eliminate all restrictions on contracting out of work on the railroads involved. This action of the railroads neither constitutes any recognition of the need for the handling on a national basis of the contracting out of work problems on a particular railroad by the Unions involved in the wage dispute, nor does it constitute any excuse for the Burlington not negotiating in good faith with the Unions in the present dispute.

Fifth, the Burlington waived any claim that it might have had that the Section 6 notice served by the Unions was invalid under the Railway Labor Act because it was not served on all the parties to the 1964 agreement when it not only responded to that notice on March 29, 1968, without raising this issue but, in fact, served a counter notice limited solely to the agreement between the Unions and the Burlington. The Burlington's response and counter notice appear as Exhibit C to the complaint, Docket Item 1, Volume 1 of Joint Appendix. Moreover, thereafter the Burlington held conferences with the Unions involved on the Unions' Section 6 notice and the Burlington's counter proposal for a period of approximately one year. While it is true that during this period the Burlington attempted to preserve the claim now advanced, its conduct during that period belies any such contention.

III

The District Court Erred In Granting A Preliminary Injunction Because The Burlington Has Not Complied With Section 8 Of The Norris-LaGuardia Act

Section 4 of the Norris-LaGuardia Act (29 U.S.C.A., Section 104), provides that a Federal court shall not have jurisdiction to issue an injunction in any case involving or growing out of a labor dispute

prohibiting a strike in such dispute. This prohibition, however, does not deprive a district court of jurisdiction to enjoin a strike in violation of the Railway Labor Act. Brotherhood of Railroad Trainmen v. Akron & Barberton Belt Railroad Company, 128 U.S. App. D.C. 59, 385 F.2d 581 (D.C. Cir., 1967), cert. den. 390 U.S. 923.

However, even though a district court may have jurisdiction to enjoin a strike in a labor dispute which is threatened in violation of the Railway Labor Act, it errs in doing so if the complainant railroad has failed to comply with its obligations under the Railway Labor Act because of the provisions of Section 1 of the Norris-LaGuardia Act (29 U.S.C.A., Section 101), which read as follows:

"No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

Among the provisions of the Norris-LaGuardia Act with which a complainant must comply are the provisions of Section 8 thereof (29 U.S.C.A., Section 108), which read as follows:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

The necessity for a complaining railroad to comply with the requirements of Section 8 of the Norris-LaGuardia Act as a condition precedent to the grant of injunctive relief in a labor dispute is attested by the decisions in Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R. Co.,

321 U.S. 50 (1944), and Brotherhood of Railroad Trainmen v. Akron & Barberton Belt Railroad Company, 128 U.S. App. D.C. 59, 385 F.2d 581 (D.C. Cir., 1967), cert. den. 390 U.S. 923. This Court set forth this requirement in the Akron case, cited above, as follows (pages 613-14):

"The District Court erred in concluding that because it held, correctly, that the action was not subject to Section 4 of the Norris-LaGuardia Act, which would have ousted the court of jurisdiction, it necessarily followed that the 'clean hands' provision of Section 8 of the Norris-LaGuardia Act was likewise wholly inapplicable. The Supreme Court has said, speaking through the Chief Justice, that 'there must be an accommodation' of this Act with the Railway Labor Act. Brotherhood of Railroad Trainmen v. Chicago R. & Ind. R.R., 353 U.S. 30, 40, 77 S.Ct. 635, 1 L.Ed.2d 622 (1957). That principle of accommodation means that actions to enjoin violations of the Railway Labor Act may be maintained without regard to Section 4 of the Norris-LaGuardia Act, and yet be subject to Section 8 of that Act. That is the conclusion of other courts which have considered the matter, and we agree. The point is, simply that Congress did contemplate actions to effectuate the Railway Labor Act by enjoining violations. That purpose would be utterly defeated if the federal court actions involved were subject to Section 4 of the Norris-LaGuardia Act, which had provisions for withholding injunctions in labor disputes reflecting entirely different objectives.

"On the other hand a ruling that Section 8 of the Norris-LaGuardia Act is applicable to actions to enjoin violations of the Railway Labor Act would not trammel but would rather further the effectuation of that Railway Labor Act, for it ensures compliance by complainant carrier or union which cannot seek an injunction until and unless it has discharged the obligations imposed by the Railway Labor Act."

The complainant Burlington in this case failed to comply with the requirements of Section 8 of the Norris-LaGuardia Act as a condition precedent to the grant of injunctive relief in two respects.

First, the Burlington made an agreement between the Unions and the Burlington in this labor dispute impossible by reason of its insistence, in violation of the Railway Labor Act, that the subject matter

of the Unions' Section 6 notice was not bargainable under the Railway Labor Act. The District Court so found in paragraph (4) of its conclusions of law, which read in pertinent part as follows (Docket Item 24, page 9, Volume 2 of Joint Appendix):

"Plaintiff's persistent contention that the issue of 'contracting out' was not bargainable under the Railway Labor Act, while perhaps not urged in bad faith, was legally unsound and made ultimate agreement an impossibility."

Thus, the Burlington was clearly not entitled to injunctive relief under the provisions of Section 8 of the Norris-LaGuardia Act, quoted above, which prohibit such relief in a labor dispute where the complainant "has failed to comply with any obligation imposed by law".

Second, the Burlington refused to formally execute the agreement tendered by the Secretary of Labor to provide for good faith efforts under the auspices of the Secretary of Labor after having agreed to such arrangements when it found out that the District Court intended to rule in its favor. This is in clear violation of the provisions of Section 8, quoted above, which provide that no injunctive relief can be granted to a complainant who has failed to make every reasonable effort to settle a labor dispute "with the aid of any available governmental machinery". There was thus available governmental machinery to aid in the settlement of this dispute without any threat of injury to the Burlington. The decision of the Supreme Court in Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R. Co., 321 U.S. 50 (1944), makes clear that a complainant seeking injunctive relief is required to utilize available means of settling disputes as a condition to such relief, even though the utilization of the means is not required by the Railway Labor Act. In that case, the Court

held that a railroad was not entitled to an injunction to prevent a strike in a labor dispute wherein it had declined to arbitrate. The Court, in setting forth the carrier's obligations, spoke as follows (pages 56-57):

"If a complainant has failed (1) to comply with any obligation imposed by law or (2) to make every reasonable effort to settle the dispute, he is forbidden relief. The latter condition is broader than the former. One must not only discharge his legal obligations. He must also go beyond them and make all reasonable effort, at least by the methods specified if they are available, though none may involve complying with any legal duty." (Emphasis supplied.)

The Burlington's refusal to formally execute the memorandum agreement with the Secretary of Labor after learning that the District Court intended to rule in its favor does not meet the requirements of Section 8 of the Norris-LaGuardia Act as thus construed by the Supreme Court.

The District Court, however, rejected the contention of the Unions that the Burlington had not met the legal prerequisites for the issuance of an injunction set forth in Section 8 of the Norris-LaGuardia Act on the ground that this Court's holding in the Akron case, cited above, permitted it to conclude in a particular case that the imperatives of the Railway Labor Act may override the requirements of Section 8 (Docket Item 24, pages 9-12, Volume 2 of Joint Appendix). The portion of that opinion to which the District Court referred reads as follows (page 614):

"It may be that in a particular case the District Court might conclude that the imperatives of the Railway Labor Act override Section 8--a statutory focusing so to speak of an equity approach whereby lack of clean hands may be overcome by a balancing of interests, particularly where it is the public interest involved. In a particular case the District Court might conclude that the question of the applicability of Section 8 was doubtful, would

require time to explore, and that the restraining order should issue forthwith to avoid jeopardizing the Railway Labor Act. Such approaches would recognize that Section 8 of the Norris-LaGuardia Act has some applicability, and is a legislative instruction that weighs heavier in the scale than the clean hands doctrine taken merely as a general equity maxim, yet is overborne by requirements of the Railway Labor Act. Here, however, the approach of the District Court was that Section 8 of the Norris-LaGuardia Act was completely inapplicable and that was error. In saying that the restraining order was erroneously entered, however, we do not mean that would excuse a contemptuous violation."

It is quite clear that this case does not meet the standards laid down by this Court for the overriding of Section 8. The carrier's violation of Section 8 was clear and was so found by the District Court so that the question of the applicability of Section 8 was not doubtful and did not require time to explore. Moreover, there was no need for a preliminary injunction to avoid jeopardizing the Railway Labor Act since the intervention of the Secretary of Labor had clearly eliminated that possibility at the time the court acted.

IV

The District Court Correctly Ruled That The Subject Matter Of The Dispute Was Bargainable Under The Railway Labor Act And That The Refusal Of The Burlington To Negotiate Thereon Violated The Act And Prevented Settlement Of The Dispute

The District Court ruled (Docket Item 24, page 5, Volume 2 of Joint Appendix) that the subject matter of the Unions' Section 6 notice covered matters which are mandatorily bargainable under the Railway Labor Act. The court further ruled that the Burlington's persistent contention that the changes in the rules sought by the Unions were not legally bargainable "was legally unsound and made ultimate agreement an impossibility" (Docket Item 24, page 9, Volume 2 of Joint Appendix).

The court concluded that the refusal of the Burlington to negotiate on this subject constituted a failure by it to comply with the requisites of the Railway Labor Act (Ibid.)

The Burlington has appealed this ruling of the District Court in Case No. 22993. Assuming arguendo that such an appeal is proper from an order granting the complainant the relief requested as contrasted to merely offering the argument as an alternative basis for sustaining the District Court's order,^{2/} the Unions submit that this ruling of the District Court is sound as a matter of law.

The District Court cited in support of its ruling this Court's holding in Brotherhood of Railroad Trainmen v. Akron & Barberton Belt Railroad Company, 128 U.S. App. D.C. 59 at page 79, 385 F.2d 581 at page 601, on which point this Court spoke as follows:

"The subjects for mandatory mutual consideration are defined in Section 6 merely by reference to 'rates of pay, rules, or working conditions'. But the courts have ratified the practice of the industry so that the duty to bargain 'generally has been considered to absorb and give statutory approval to the philosophy of bargaining as

^{2/} See United States v. Raines, 362 U.S. 17 (footnote 7), in which the Supreme Court spoke as follows:

"Many of these contentions are raised by what appellees style a 'cross-appeal.' Notice of cross-appeal was filed in the District Court, but the cross-appeal was not docketed here. However, since the judgment of the District Court awarded appellees all the relief they requested (despite rejecting most of their contentions, except the central one), no cross-appeal was necessary to bring these contentions before us if they can be considered otherwise. They would simply be alternative grounds on which the judgment below could be supported. In view of the broad nature of § 1252, which seems to indicate a desire of Congress that the whole case come up (contrast 18 USC § 3731, United States v. Borden Co. 308 US 188, 193, 84 L ed 181, 188, 60 S Ct 182), we have the power to pass on these other questions, and since the District Court expressed its views on most of them, we also deem it appropriate to do so."

worked out in the labor movement in the United States.' That is, 'what carriers must legally bargain about is affected by what is in fact bargained about in the railroad world'."

The District Court correctly cited the fact that the subject matter of the Section 6 notice of the Unions had been a matter of collective bargaining within the railroad world for a substantial period, had included negotiations with the Burlington itself in 1962, consideration by Presidential Emergency Board No. 160, and by prior agreements with railroads on the subject including the 1964 agreement to which the Burlington was a party (Docket Item 24, page 2, Volume 2 of Joint Appendix). Thus, the subject matter of the dispute was clearly one which had been recognized for a long time by the railroads and their employees, including the Burlington, as a proper subject matter for collective bargaining.

In addition, the District Court cited in support of its ruling the decision of the Supreme Court in Fibreboard Paper Products Corp. v. National Labor Relations Board, 379 U.S. 203 (1964), in which the Supreme Court, in affirming a decision of this Court, stated that the contracting out of work is a "condition of employment" within the meaning of the National Labor Relations Act. Thus, the District Court properly concluded that the contracting out of railroad work is also a "condition of employment" under the Railway Labor Act.

The District Court therefore clearly correctly concluded that the subject matter of the Unions' Section 6 notice was properly bargainable under the Railway Labor Act both as a subject about which the parties had bargained in the past and as a subject matter falling within the statutory language of "rates of pay, rules, and working conditions".

CONCLUSION

The Unions respectfully submit that upon the basis of the foregoing points and authorities the District Court erred as a matter of law in granting the preliminary injunction and that this Court should reverse the District Court's order granting the preliminary injunction and direct that such injunction be dissolved.

Respectfully submitted,

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James L. Highsaw, Jr.
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Washington, D. C. 20005

Counsel for Railway Employees' Department,
AFL-CIO, System Federation No. 95, et al.

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
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Washington, D. C. 20005

June 9, 1969

APPENDIX A

MEMORANDUM OF UNDERSTANDING

The Chicago, Burlington and Quincy Railroad and certain of its employees represented by the International Association of Machinists and Aerospace Workers, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Sheet Metal Workers' International Association, International Brotherhood of Electrical Workers, Brotherhood Railway Carmen of America and International Brotherhood of Firemen and Oilers functioning through the Railway Employees' Department, AFL-CIO, labor organizations (hereinafter referred to as the parties), record by this memorandum their understanding and agreement for the indefinite extension of the status quo in the shopcrafts sub-contracting dispute originating in the exchange of notices under Section 6 of the Railway Labor Act on March 25 and March 29, 1968.

Beginning on the date of this Memorandum of Understanding the carriers and the labor organizations signify and agree that no changes, except by mutual agreement, shall be made in the terms and conditions out of which this dispute arose during the proceedings set forth herein.

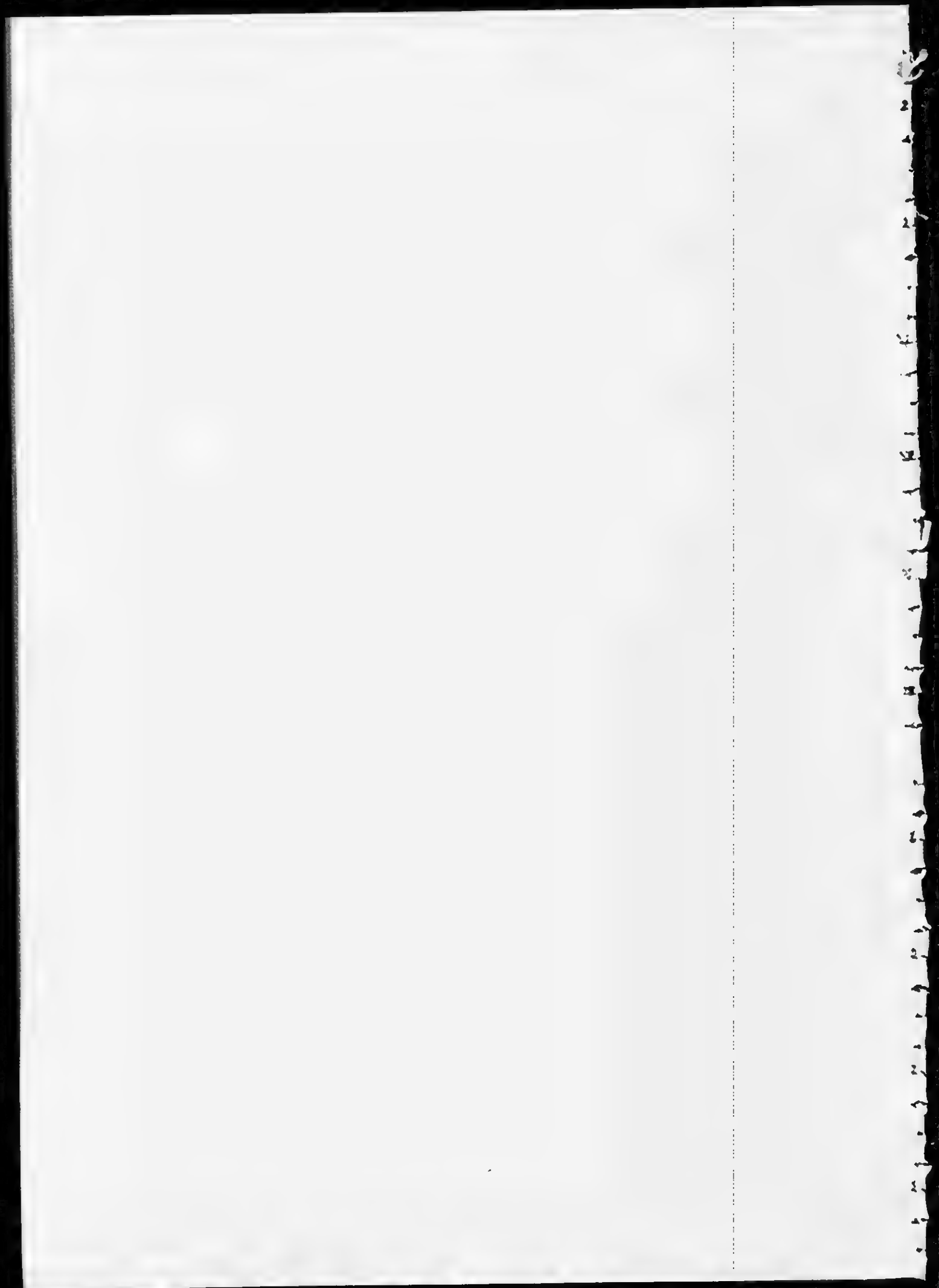
The parties shall upon the request of the Secretary of Labor and under his auspices, immediately meet and confer in a good-faith effort to resolve the issues in dispute. The parties agree that they shall cooperate fully with the Secretary of Labor and his representatives in an effort to resolve these issues without interruption of essential transportation service.

This Memorandum may be terminated by either party upon five (5) days notice to the Secretary of Labor and to the other party. The parties agree that the terms and conditions referred to herein shall not be changed, except by mutual agreement, until five (5) days after the receipt of said notice.

The parties signify and agree that the provisions of this Memorandum will be fully binding upon them and that they will in good faith comply with its terms.

For the CB&Q Railroad:

For the Labor Organizations:



645
United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 12 1969

Nathan J. Paulson
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CASES NOS. 22966 and 22993

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Appellee,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,

Appellants.

Appeals From A Judgment Of The United States District Court
For The District Of Columbia

JOINT APPENDIX
VOLUME NO. I

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RELEVANT DOCKET ENTRIES IN PROCEEDING BELOW

No. 22966



CIV DOCKET

United States District Court for the District of Columbia

CHICAGO, BURLINGTON & QUINCY RAILROAD CO. RAILWAY EMPLOYEES' DEPT. ET AL C. A. No. 630-69 Supplemental Page No.

DATE	PROCEEDINGS	Fees	TOTAL
	PARTIES		
	ATTORNEYS		
	Shea & Gardner		
	Francis M. Shea		
	CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY		
	734 Fifteenth Street, N.W. 20005		
	vs.		
	1. RAILWAY EMPLOYEES' DEPARTMENT AFL-CIO	William J. Hickey 620 Tower Building	Edward J. Hickey, Jr. James L. Highsaw, Jr. 620 Tower Bldg. 20005
	2. SYSTEM FEDERATION NO. 95, Railway Employees' Department, AFL-CIO	do	do
	3. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS	do	do
	4. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS	do	do
	5. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION	do	do
	6. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS	do	do
	7. BROTHERHOOD RAILWAY CARMEN OF UNITED STATES AND CANADA	do	do
	8. INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS	do	do

United States District Court for the District of Columbia

[illegible]

CIVIL DOCKET
United States District Court for the District of Columbia

DATE	PROCEEDINGS	FEES	TOTAL
1969	Deposit for cost by		
Mar. 13	Complaint, appearance Exhibits A, B & C. #8 ser. 3/17/69 #1 & 2 ser. 3/18/69, #4 ser. filed 3/18/69		1
Mar. 13	Summons, copies (8) and copies (8) of Complaint issued #3, 5&6 ser. 3/16/69; #7 ser. 3/26/69		2
Mar. 13	Motion for temporary restraining order. (filed with Judge McGuire = Mar. 12, 1969=)		3
Mar. 13	Motion for preliminary injunction. (filed with Judge McGuire Mar. 12, 1969) P & A's; Annex I. (filed with Judge McGuire Mar. 12, 1969)		4
Mar. 13	Affidavit of B. G. Upton. (filed with Judge McGuire Mar. 12, 1969) Appendix A, B, C, D, E, F & G. filed with Judge McGuire Mar. 12, 1969		5
Mar. 13	Certificate of plaintiff's counsel. (filed with Judge McGuire Mar. 12, 1969)		6
Mar. 13	Temporary restraining order returnable March 22, 1969 at 10:00 O'clock A.M.; undertaking \$5,000.00 (filed by Judge McGuire, March 12, 1969) McGuire, J.		7
Mar. 13	Undertaking of Pltf in sum of \$5,000.00 with The Aetna Casualty and Surety Company; approved (signed 3/12/69) McGuire, J.		
Mar. 20	Appearance of William J. Hickey for Defts. filed.		8
Mar. 20	Consent Order extending temporary restraining order to 10:00 A.M. April 5, 1969. (N). Bryant, J.		9
Mar. 21	Affidavit of Fred E. Dines; Appendix A, B, C, D, E, F, G & H; Exhibit C; C/S 3/20/69. filed.		10
Mar. 21	Affidavit of I. C. Ethington; C/S 3/20/69. filed.		11
Mar. 21	Affidavit of A. F. Egbers; Appendix A, B, C, & D; C/S 3/20/69. filed.		12
Apr. 1	Supplemental affidavit of A. E. Egbers on behalf of pltf. appendix A, B. c/m 3/28/69. filed		13
Apr. 1	Affidavit of William J. Jackel. c/m 3/28/69. filed		14
Apr. 1	Affidavit of M. W. Maker. c/m 3/28/69. filed		15
Apr. 1	Affidavit of I. C. Ethington; attachments A, B. c/m 3/28/69. filed		16
Apr. 1	Appearance of Edward J. Hickey, Jr. as counsel for defts. filed		17
Apr. 1	Appearance of James L. Highsaw, Jr. as counsel for defts. filed		18
Apr. 1	Motion of defts. for summary judgment; statement; affidavit; appendix A thru Q. c/m 3/31/69. M.C. filed		19
Apr. 1	Opposition of defts. to pltf's. motion for a preliminary injunction and in support of defts. motion for summary judgment. c/m 3/28/69. filed		20
Apr. 2	Reply memorandum of pltf. in support of motion for preliminary injunction: p/s 4/1/69 Exhibit filed see next page		21

United States District Court for the District of Columbia

CHICAGO, ILL. RAILWAY EMPLOYEES' C. A. No. 630-69 Supplemental Page No. 2

[illegible]

VERIFIED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF WITH EXHIBITS A, B, AND C

DOCKET ITEM 1

Filed: March ____, 1969

United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY, 547 West Jackson Boulevard,
Chicago, Illinois,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO,
220 S. State Street, Chicago, Illinois;
SYSTEM FEDERATION NO. 95, Railway
Employees' Department, AFL-CIO,
2516 Yoder Drive, Burlington, Iowa;
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, 1300
Connecticut Avenue, N.W., Washington,
D.C.; INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS & HELPERS, 400 -
1st Street, N.W., Washington, D.C.;
SHEET METAL WORKERS' INTERNATIONAL ASSOCIA-
TION, 1000 Connecticut Avenue, N.W.,
Washington, D.C.; INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, 1200 - 15th
Street, N.W., Washington, D.C.; BROTHERHOOD
RAILWAY CARMEN OF UNITED STATES AND CANADA,
400 - 1st Street, N.W., Washington, D.C.;
INTERNATIONAL BROTHERHOOD OF FIREMEN AND
OILERS, 200 Maryland Avenue, N.E., Washington,
D.C.

Defendants.

6:30-69

Civil Action No. _____

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action arising under the Railway Labor Act (45 U.S.C. §§ 151 et seq.) and under the Interstate Commerce Act (49 U.S.C. §§ 1 et seq.). This Court has jurisdiction under Sections 1331 and 1337 of the Judicial Code, 28 U.S.C. §§ 1331 and 1337. The amount involved in this controversy exceeds the sum or value of \$10,000, exclusive of interest and costs.

2. Plaintiff is a corporation incorporated under the laws of the State of Illinois, is engaged in the transportation of freight and passengers by rail in interstate commerce, and is a "carrier" as defined in Section 1 of the Railway Labor Act (45 U.S.C. § 151). Plaintiff (hereinafter

"Burlington") owns, leases and operates approximately 13,000 miles of track, including yard tracks and sidings, in twelve states. Its main lines radiate from Chicago and extend to St. Paul and Minneapolis, Minnesota; St. Louis and Kansas City, Missouri; Omaha and Lincoln, Nebraska; Denver, Colorado; Billings, Montana; and Paducah, Kentucky, with numerous branches on each of said lines. Burlington's system is an integral part of the nationwide railway system of the United States, and it connects and interchanges freight and passengers with other railroads at approximately 155 points in twelve states. It serves on its lines more than 30,000 industrial plants and business enterprises, including stock yards, meat packing and food and clothing establishments, United States post offices, munitions plants, military and training centers and Federal Hospitals. Each business day, it operates commuter trains in the Chicago area, carrying more than 40,000 commuters daily. In 1968, its total railway operating revenues exceeded \$284,096,000, and it employed more than 17,000 persons. Burlington in 1968 transported more than 1.5 million tons of defense materials, supplies and equipment. Great detriment would result to the national defense, to shippers and to the public from any suspension, stoppage or interference with the operation of the Burlington's railroad system.

3. Defendant Railway Employees' Department, AFL-CIO, is a voluntary unincorporated association through which other named defendants function in their representation, under the Railway Labor Act, of approximately 2800 of Burlington's employees, and System Federation No. 95 is a branch of the Railway Employees' Department, AFL-CIO. Their membership consists of defendants International Association of Machinists and Aerospace Workers, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Sheet Metal Workers' International Association, International Brotherhood of Electrical Workers, Brotherhood Railway Carmen of United States and Canada and International Brotherhood of Firemen and Oilers. The member

unions of System Federation No. 95 are labor organizations which are collectively known in the industry as the "Shop Unions." The defendants are sued herein individually and as representatives of the classes of employees of Burlington represented by them.

4. The rates of pay, rules and working conditions of Burlington's employees represented by the defendants are governed by collective bargaining agreements in effect between Burlington and defendants.

5. On or about March 25, 1968, the defendant labor organizations served on plaintiff a demand for an amendment to an existing national collective bargaining agreement dated September 25, 1964, a copy of which is attached hereto as Exhibit A. The notice was purportedly served pursuant to Section 6 of the Railway Labor Act (45 U.S.C. § 156), and, in summary, proposed a rule that would bar Burlington from purchasing, leasing or unit exchanging for, any new equipment or parts, and from contracting with third parties for any work set forth in the Classification of Work rules in existing collective bargaining agreements between Burlington and defendants, except with the consent and approval of defendants. A copy of said notice is attached hereto as Exhibit B. Burlington served a counter notice pursuant to Section 6 of the Railway Labor Act seeking the elimination of existing restrictions on the plaintiff's rights to lease, purchase, or exchange equipment or parts and to contract out work. A copy of Burlington's counter notice is attached hereto as Exhibit C.

6. Conferences were held between Burlington and representatives of defendants concerning these proposed changes in the existing agreement, but no agreement was reached. On July 5, 1968, Burlington was notified by the National Mediation Board that it had received an application for mediation from defendant Railway Employees' Department, AFL-CIO, System Federation No. 95. Mediation commenced on October 24, 1968 but failed to produce any agreement between the parties. On January 17, 1969, virtually at the conclusion of the mediation, the defendants delivered to Burlington a new

proposal which purported to state defendants' final position in the matter, which made demands substantially in excess of those made in defendants' section 6 notice of March 25, 1968, and which further included matters unrelated to the issues framed by the parties' respective section 6 notices.

7. On January 23, 1969, the defendants demanded of the National Mediation Board that mediation be terminated. By letter dated January 29, 1969, the Board, in accordance with Section 5, First, of the Railway Labor Act, proffered arbitration. The Burlington accepted but the defendants refused the proffer of arbitration, and the Board therefore terminated its services effective February 4, 1969.

8. The defendants take the position that from and after midnight of March 6, 1969 (thirty days after the termination of service by the National Mediation Board), the procedures of the Railway Labor Act for the resolution of the dispute raised by defendants' notice and the plaintiff's counter notice will have been exhausted, and the defendants will then be free to strike the Burlington if it does not accede to the defendants' demands. In the course of post-mediation conferences held between the parties at the request of Burlington, defendants represented that they would not strike prior to March 9, 1969, or as long thereafter as conferences continued. The defendants would give no assurances, however, that they would refrain from striking thereafter, and the defendants have now terminated conferences between the parties.

9. The Burlington is threatened with a strike by its employees represented by defendants at any time after March 11, 1969. During February, 1969, notices appeared on the Burlington's properties in which defendants notified their members of the termination of mediation and advised them to prepare for a strike. The Burlington is informed and believes that a strike vote has been taken by its employees who are members of the defendant labor organizations, and that said employees have voted to authorize a strike.

10. The Burlington disagrees with the position of defendants, set forth in Paragraph 8 above, that they are free to strike after March 6, 1969. The Burlington takes the position that defendants have not complied with the requirements of the Railway Labor Act with respect to the matters in dispute, and accordingly are not free to exercise self-help because:

(a) The defendants' notice of March 25, 1968, by seeking to prohibit, unless the labor organization concerned concurred, all contracting out of work, and all purchase, lease, or unit exchange of equipment or parts the repair, rebuilding or manufacture of which is set out in the governing classification of work rules or is generally recognized as work of the crafts or classes represented by defendants, regardless of the circumstances, and regardless of whether the Carrier had the facilities, manpower or equipment to perform the work; and further by seeking to eliminate virtually all defenses of the Carrier to claims or grievances arising under the Agreement with respect to the fact or amount of damages; and in several other particulars; went far beyond the subject of changes in "rates of pay, rules, or working conditions" about which a carrier is required to bargain under Section 6 of the Railway Labor Act (45 U.S.C. § 156).

(b) The defendants, by their intransigent refusal to bargain in good faith with the Burlington or to consider any changes in their proposal of March 25, 1968, other than changes which would even further restrict the rights of the Carrier, have failed to comply with the requirement of Section 2 First of the Railway Labor Act (45 U.S.C. § 152 First) "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions."

(c) The defendants' proposal of January 17, 1969, by exceeding the scope of defendants' notice of March 25, 1968 and raising several new matters not contained in said notice, demanded wholly new changes in the governing collective bargaining agreements, which proposed new changes have not been processed in accordance with the requirements of the Railway Labor Act.

(d) The defendants' notice of March 25, 1968 and subsequent proposals improperly sought to force a single Carrier to agree to amend, with respect to a national issue, a collective bargaining agreement arrived at through national bargaining between the defendants and most of the nation's rail carriers.

11. The uninterrupted services of Burlington's employees who are members of the defendant labor organizations or are represented by them are essential to the operation of its transportation services. If not enjoined

by this Court, the threatened illegal strike alleged in Paragraph 9 above, would cause great and irreparable injuries to Burlington and to the public. It would seriously impair the rail transportation system in a large area of this country, to the detriment of the public welfare, including the national defense. Burlington would be deprived of hundreds of thousands of dollars in operating revenues, would be unable to maintain or use its properties and equipment in which it has a substantial investment, would lose permanently to competing forms of transportation much business and revenue, and would be unable to fulfill its obligations under the Interstate Commerce Act to serve the public. Several thousands of employes of Burlington not involved in the present controversy would be deprived of their positions and earnings for the duration of the strike or longer. Such a strike would substantially interfere with the transportation in interstate commerce of passengers, mail, freight, and express lading (including Government mail and express, and military supplies and materials), and food and other lading essential to the public health and safety.

WHEREFORE, plaintiff prays that this Court (1) adjudge and declare that the procedures of the Railway Labor Act have not been exhausted with respect to the dispute alleged in this complaint and that the defendants are not free to strike the plaintiff on or after March 6, 1969; (2) restrain and enjoin the defendants, their divisions, locals, officers, agents, employes, members, and all persons acting in concert with them from authorizing, calling, encouraging, permitting, or engaging in any strike or work stoppage against and/or from picketing the premises of plaintiff in connection with the dispute alleged in this complaint; and (3) grant to plaintiff its

costs and such other and further relief as may be proper.

Dated: March ____, 1969

Francis M. Shea
Ralph J. Moore, Jr.
Martin J. Flynn
Peter A. Hornbostel

Of Counsel:

James A. Wilcox
General Counsel
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737-1255

T.G. Schuster

General Attorney
Chicago, Burlington & Quincy Railroad Co.
547 West Jackson Boulevard
Chicago, Illinois

Attorneys for Plaintiff.

VERIFICATION

B.G. Upton, of full age, being duly sworn according to law, upon his oath deposes and says:

I am a staff officer, labor relations, for the Chicago, Burlington & Quincy Railroad Company, having my office at 547 West Jackson Boulevard, Chicago, Illinois. I am fully familiar with the facts relating to this dispute alleged in the foregoing complaint. The facts alleged in the complaint are true to the best of my knowledge and belief.

B. G. Upton

DISTRICT OF COLUMBIA) SS:

Subscribed and sworn to before me this ____ day of March, 1969.

SEAL

Notary Public

My commission expires _____

SHOP CRAFTS
SEPTEMBER 25, 1964

AGREEMENT

DATED SEPTEMBER 25, 1964

between the

NATIONAL RAILWAY LABOR CONFERENCE

and

EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES

and

EMPLOYEES OF SUCH CARRIERS

REPRESENTED BY THE ORGANIZATIONS COMPRISING THE

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO

EXHIBIT A TO COMPLAINT
(15 pages) AND Exhs. A, B, C.

M E D I A T I O N A G R E E M E N T

Case No. A-7030

This Agreement made this 25th day of September, 1964, by and between the participating carriers listed in Exhibits A, B and C attached hereto and made a part hereof and represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees of such carriers shown thereon and represented by the railway labor organizations signatory hereto, through the Railway Employees' Department, AFL-CIO,

Witnesseth:

IT IS AGREED:

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

Any job protection agreement which is now in effect on a particular railroad which is deemed by the authorized employee representatives to be more favorable than this Article with respect to a transaction such as those referred to in Section 2 hereof, may be preserved as to such transaction by the representatives so notifying the carrier within thirty days from the date of receipt of notice of such transaction, and the provisions of this Article will not apply with respect to such transaction.

None of the provisions of this Article shall apply to any transactions subject to approval by the Interstate Commerce Commission, if the approval order of the Commission contains equal or more favorable employee protection provisions, or to any transactions covered by the Washington Job Protection Agreement.

Section 2 -

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

- a. Transfer of work;
- b. Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof;
- c. Contracting out of work;
- d. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;

- e. Voluntary or involuntary discontinuance of contracts;
- f. Technological changes; and,
- g. Trade-in or repurchase of equipment or unit exchange.

Section 3 -

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements, the layoff of temporary employees or a decline in a carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier.

Section 4 -

The carrier shall give at least sixty (60) days (ninety (90) days in cases that will require a change of employee's residence) written notice of the abolition of jobs as a result of changes in operations for any of the reasons set forth in Section 2 hereof, by posting a notice on bulletin boards convenient to the interested employees and by sending certified mail notice to the General Chairman of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes in operations, including an estimate of the number of employees of each class affected by the intended changes, and a full disclosure of all facts and circumstances bearing on the proposed discontinuance of positions. The date and place of a conference between representatives of the carrier and the General Chairman or his representative, at his option, to discuss the manner in which and the extent to which employees may be affected by the changes involved, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5 -

Any employee who is continued in service, but who is placed, as a result of a change in operations for any of the reasons set forth in Section 2 hereof, in a worse position with respect to compensation and rules governing working conditions, shall be accorded the benefits set forth in Section 6(a), (b) and (c) of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period."

Section 6 -

Any employee who is deprived of employment as a result of a change in operations for any of the reasons set forth in Section 2 hereof shall be accorded a monthly dismissal allowance in accordance with the terms and conditions set forth in Section 7(a) through (j) of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 7 (a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

<i>Length of Service</i>	<i>Period of Payment</i>
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or
2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation. "

"(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause."

Section 7 -

Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service					Separation Allowance		
1 year & less than 2 years					3 months' pay		
2 years	"	"	3	"	6	"	"
3	"	"	5	"	9	"	"
5	"	"	10	"	12	"	"
10	"	"	15	"	12	"	"
15 years and over					12	"	"

In the case of employees with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

- (a) Length of service shall be computed as provided in Section 7.
- (b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination."

Section 8 -

Any employee affected by a change in operations for any of the reasons set forth in Section 2 hereof shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees of the carrier, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Section 9 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 10 of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 10 (a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section."

Section 10 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 11 of the Washington Job Protection Agreement of May, 1936, reading as follows:

"Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.
2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.
3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party. "

Section 11 -

When positions are abolished as a result of changes in the carrier's operations for any of the reasons set forth in Section 2 hereof, and all or part of the work of the abolished positions is transferred to another location or locations, the selection and assignment of forces to perform the work in question shall be provided for by agreement of the General Chairman of the craft or crafts involved and the carrier establishing provisions appropriate for application in the particular case; provided however, that under the terms of the agreement sufficient employees will be required to accept employment within their classification so as to insure a force adequate to meet the carrier's requirements. In the event of failure to reach such agreement, the dispute may be submitted by either party for settlement as hereinafter provided.

Section 12 -

Any dispute with respect to the interpretation or application of the foregoing provisions of Sections 1 through 11 of this Article (except as defined in Section 10) with respect to job protection, including disputes as to whether a change in the carrier's operations is caused by one of the reasons set forth in Section 2 hereof, or is due to causes set forth in Section 3 hereof, and disputes as to the protective benefits to which an employee or employees may be entitled, shall be handled as hereinafter provided.

ARTICLE II - SUBCONTRACTING

The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II.

Section 1 - Applicable Criteria -

Subcontracting of work, including unit exchange, will be done only when (1) managerial skills are not available on the property; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts.

Section 2 - Advance Notice - Submission of Data - Conference -

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions. The General Chairman or his designated representative will notify the carrier within

ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the carrier may, notwithstanding, proceed to subcontract the work, and the organization may process the dispute to a conclusion as hereinafter provided.

Section 3 - Request for Information When No Advance Notice Given -

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Section 4 - Machinery for Resolving Disputes -

Any dispute over the application of this rule shall be handled as hereinafter provided.

ARTICLE III - ASSIGNMENT OF WORK - USE OF SUPERVISORS -

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.

If any question arises as to the amount of craft work being performed by supervisory employees, a joint check shall be made at the request of the General Chairmen of the organizations affected. Any disputes over the application of this rule shall be handled as provided hereinafter.

An incumbent supervisor who assumed his present position prior to October 15, 1962, at a point where no mechanic is employed, may be retained in his present position. However, his replacements shall be subject to the preceding paragraphs of this rule.

ARTICLE IV - OUTLYING POINTS

At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of each craft, and any dispute over the designation of the craft to perform the available work shall be handled as follows: At the request of the General Chairman of any

craft the parties will undertake a joint check of the work done at the point. If the dispute is not resolved by agreement it shall be handled as hereinafter provided and pending the disposition of the dispute the carrier may proceed with or continue its designation.

Existing rules or practices on individual properties may be retained by the organizations by giving a notice to the carriers involved at any time within 90 days after the date of this agreement.

ARTICLE V - COUPLING, INSPECTION AND TESTING

In yards or terminals where carmen in the service of the carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen.

This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a "double-over" and the first car standing in the track upon which the outbound train is made up.

ARTICLE VI - RESOLUTION OF DISPUTES

Section 1 - Establishment of Shop Craft Special Board of Adjustment -

In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as "Board", is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection, and Article II, Subcontracting, of this agreement. The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act, as amended.

Section 2 - Consist of Board -

The Board shall consist of 4 members, 2 appointed by the organizations party to this agreement, and 2 appointed by the carriers party to this agreement. For each dispute the Board shall be augmented by one member selected from the panel of potential referees in the manner hereinafter provided. Successors to the members of the Board shall be appointed in the same manner as the original appointees.

Section 3 - Appointment of Board Members -

Appointment of the members of the Board shall be made by the respective parties within thirty days from the date of the signing of this agreement.

Section 4 - Location of Board Office -

The Board shall have offices in the City of Chicago, Illinois.

Section 5 - Referees - Employee Protection and Subcontracting -

The parties agree to select a panel of six potential referees for the purpose of disposing of disputes before the Board arising under Articles I and II of this agreement. Such selections shall be made within thirty (30) days from the date of the signing of this agreement. If the parties are unable to agree upon the selection of the panel of potential referees within the 30 days specified, the National Mediation Board shall be requested to name such referees as are necessary to fill the panel within 5 days after the receipt of such request.

Section 6 - Term of Office of Referees -

The parties shall advise the National Mediation Board of the names of the potential referees selected, and the National Mediation Board shall notify those selected, and their successors, of their selection, informing them of the nature of their duties, the parties to the agreement and such information as it may deem advisable, and shall obtain their consent to serve as a panel member. Each panel member selected shall serve as a member until January 1, 1966, and until each succeeding January 1 thereafter unless written notice is served by the organizations or the carriers parties to the agreement, at least 60 days prior to January 1 in any year that he is no longer acceptable. Such notice shall be served by the moving parties upon the other parties to the agreement, the members of the Board and the National Mediation Board. If the referee in question shall then be acting as a referee in any case pending before the Board, he shall serve as a member of the Board until the completion of such case.

Section 7 - Filling Vacancies - Referees -

In the event any panel member refuses to accept such appointment, dies, or becomes disabled so as to be unable to serve, is terminated in tenure as hereinabove provided, or a vacancy occurs in panel membership for any other reason, his name shall immediately be stricken from the list of potential referees. The members of the Board shall, within thirty days after a vacancy occurs, meet and select a successor for each member as may be necessary to restore the panel to full membership. If they are unable to agree upon a successor within thirty days after such meeting, he shall be appointed by the National Mediation Board.

Section 8 - Jurisdiction of Board -

The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employee Protection, and Article II, Subcontracting.

Section 9 - Submission of Dispute -

Any dispute arising under Article I, Employee Protection, and Article II, Subcontracting, of this agreement, not settled in direct negotiations may be submitted to the Board by either party, by notice to the other party and to the Board.

Section 10 - Time Limits for Submission -

Within 15 days of the postmarked date of such notice, both parties shall send 15 copies of a written submission to their respective members of the Board. Copies of such submissions shall be exchanged at the initial meeting of the Board to consider the dispute.

Section 11 - Content of Submission -

Each written submission shall be limited to the material submitted by the parties to the dispute on the property and shall include:

- (a) The question or questions in issue;
- (b) Statement of facts;
- (c) Position of employee or employees and relief requested;
- (d) Position of company and relief requested.

Section 12 - Failure of Agreement - Appointment of Referee -

If the members of the Board are unable to resolve the dispute within twenty days from the postmarked date of such submission, either member of the Board may request the National Mediation Board to appoint a member of the panel of potential referees to sit with the Board. The National Mediation Board shall make the appointment within five days after receipt of such request and notify the members of the Board of such appointment promptly after it is made. Copies of both submissions shall promptly be made available to the referee.

Section 13 - Procedure at Board Meetings -

The referee selected shall preside at meetings of the Board and shall be designated for the purpose of a case as the Chairman of the Board. The Board shall hold a meeting for the purpose of deciding the dispute within 15 days after the appointment of a referee. The Board shall consider the written submission and relevant agreements, and no oral testimony or other written material will be received. A majority vote of all members of the Board shall be required for a decision of the Board. A partisan member of the Board may in the absence of his partisan colleague vote on behalf of both. Decisions shall be made within thirty days from the date of such meeting.

Section 14 - Remedy -

If there is a claim for wage loss on behalf of a named claimant, arising out of an alleged violation of Article II, Subcontracting, which is sustained, the Board's decision shall not exceed wages lost and other benefits necessary to make the employee whole.

Section 15 - Final and Binding Character -

Decisions of the Board shall be final and binding upon the parties to the dispute.

Section 16 - Extension of Time Limits -

The time limits specified in this Article may be extended only by mutual agreement of the parties.

Section 17 - Records -

The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.

Section 18 - Payment of Compensation -

The parties hereto will assume the compensation, travel expense and other expense of the Board members selected by them. Unless other arrangements are made, the office, stenographic and other expenses of the Board, including compensation and expenses of the neutral members thereof, shall be shared equally by the parties.

Section 19 - Disputes Referred to Adjustment Board -

Disputes arising under Article III, Assignment of Work - Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing, of this agreement, shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

ARTICLE VII - EFFECT OF THIS AGREEMENT

This agreement is in full and final settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on or about October 15, 1962; and out of proposals served by the individual railroads on organization representatives of the employees involved on or about November 5, 1962, and Articles II, III and IV of proposals served by the individual railroads on organization representatives of the employees involved on or about June 17, 1963. This agreement shall be construed as a separate agreement by and on behalf of each of said carriers and its employees represented by each of the organizations signatory hereto.

ARTICLE VIII - EFFECTIVE DATE

The provisions of this agreement shall become effective November 1, 1964, and shall continue in effect until January 1, 1966, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended. Section 6 notices will not be initiated nor progressed locally or concertedly covering the subject matter contained in the proposals of the parties referred to in Article VII, prior to January 1, 1966.

ARTICLE IX - COURT APPROVAL

This agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

SIGNED AT WASHINGTON, D. C., THIS 25TH DAY OF SEPTEMBER, 1964.

For the participating carriers
listed in Exhibit A:

J. W. O'Brien
Chairman

S. B. Fee

J. W. Knight

For the Employees:

Railway Employees' Department, AFL-CIO

Michael Fox
Michael Fox, President

International Association of Machi

J. W. Ramsey
J. W. Ramsey, General Vice President

For the participating carriers
listed in Exhibit B:

[Signature]

Chairman

[Signature]

J.M. Van Patten

For the participating carriers
listed in Exhibit C:

W.B. Marshall

Chairman

[Signature]

[Signature]

APPROVED:

[Signature]

Chairman, National Railway
Labor Conference

WITNESS:

[Signature]

Member, National Mediation Board

[Signature]

Mediator, National Mediation Board

International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths,
Forgers and Helpers

[Signature]

Russel K. Berg, International President

Blacksmiths - Railroad Division

[Signature]

Edward H. Wolfe, Int'l. Vice President

Sheet Metal Workers' International
Association

[Signature]

J.W. O'Brien, General Vice President

International Brotherhood of Electrical
Workers

[Signature]

Thos. Ramsey, Int'l. Vice President

Brotherhood Railway Carmen of America

[Signature]

A. J. Benhardt, General President

International Brotherhood of Firemen,
 Oilers, Helpers, Round House and
 Railway Shop Laborers

[Signature]

Anthony Matz, President

EASTERN RAILROADS

LIST OF EASTERN RAILROADS REPRESENTED BY THE EASTERN CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES, DATED ON OR ABOUT OCTOBER 15, 1962, SERVED UPON INDIVIDUAL EASTERN RAILROADS BY THE GENERAL CHAIRMAN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE ORGANIZATIONS LISTED BELOW, AFFILIATED WITH THE RAILROAD EMPLOYERS' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS:

1. International Association of Machinists
2. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers
3. Sheet Metal Workers' International Association
4. International Brotherhood of Electrical Workers
5. Brotherhood Railway Carmen of America
6. International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers

OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS TO EFFECTUATE THE PROPOSALS SET FORTH IN APPENDIX "A" ATTACHED THERETO, AND NOTICES WHICH WERE SERVED BY THE CARRIERS FOR CONCURRENT HANDLING THEREWITH.

This authorization is co-extensive with provisions of current schedule agreements applicable to employees represented by the organizations listed above.

Subject to the foregoing, and to indicated footnotes, the classes of employees covered by this authorization are indicated by "x" inserted in the numbered columns below:

RAILROADS	Machinists	Boilermakers and Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers
	1	2	3	4	5	6
Akron, Canton & Youngstown RR. Co., The	x	x	x	x	x	x
Ann Arbor RR. Co., The	x	1-x	x	x	x	x
Baltimore and Ohio RR. Co., The	2-x	2-x	2-x	2-x	2-x	x
Baltimore & Ohio Chgo. Terminal RR. Co., The	x	x	x	x	x	x
Staten Island Rapid Transit Ry. Co., The	3-x	3-x	3-x	3-x	3-x	x
Strouds Creek and Middleby Railroad	x	x	x	x	x	x
Bangor and Aroostook Railroad	x	x	x	x	x	x
Bessemer and Lake Erie Railroad	x	x	x	x	x	x
Boston and Maine Railroad	x	x	x	x	x	x
Brooklyn Eastern District Terminal	x					
Buffalo Creek Railroad	x					

RAILROADS	Machinists	Boilermakers and Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers
	1	2	3	4	5	6
Canadian National Railways						
Lines in the United States						
St. Lawrence Region	x	x	x	x	x	x
Great Lakes Region	x	x	x	x	x	x
Canadian Pacific Railway Co.	4-x	4-x	4-x	4-x	4-x	4-x
Central Railroad Co. of New Jersey, The	x	x	x	x	x	x
New York & Long Branch RR. Co.	x	x	x	x	x	x
Central Vermont Railway	x	x	x	x	x	x
Chicago Union Station Company	x			x		x
Cincinnati Union Terminal Company, The	x	x	x	x	x	x
Dayton Union Railway Company, The					x	
Delaware and Hudson Railroad Corp., The	x	x	x	x	x	x
Detroit and Toledo Shore Line RR. Co., The	x	x			x	x
Detroit Terminal Railroad	x	x			x	x
Detroit, Toledo and Ironton RR. Co.	x	x	x	x	x	x
Erie-Lackawanna Railroad Co.	x	x	x	x	x	x
Grand Trunk Western Railroad Co.	x	x	x	x	x	x
Indianapolis Union Railway Co., The	x			x	x	x
Lehigh and Hudson River Ry. Co., The	x	x		x	x	x
Lehigh Valley Railroad	x	x	x	x	x	x
Maine Central Railroad Company	x	x	x	x	x	x
Portland Terminal Company	x	x	x	x	x	x
Monon Railroad	x	x	x	x	x	x
Monongahela Railway Company, The	x	x	x	x	x	x
Montour Railroad Company	x	x	x	x	x	x
NEW YORK CENTRAL SYSTEM						
New York Central RR. Co.						
New York District	x	x	x	x	x	x
Grand Central Terminal	x	x	x	x	x	x
Eastern District	x	x	x	x	x	x
Boston & Albany Division	x	x	x	x	x	x
5-Western District	x	x	x	x	x	x
Northern District	x	x	x	x	x	x
6-Southern District	x	x	x	x	x	x
Indiana Harbor Belt Railroad Co.	x	x	x	x	x	x
Chicago River & Indiana Railroad Co.	x	x	x	x		x
Pittsburgh & Lake Erie Railroad Co.	x	x	x	x		x
Lake Erie & Eastern Railroad Co.	x	x	x	x	x	x
Cleveland Union Terminals Co., The	x	x	x	x		
New York, Chicago & St. Louis Railroad Co., The	x	x	x	x	x	x
New York, New Haven & Hartford Railroad Co.	x	x	x	x	x	x
New York, Susquehanna & Western Railroad	x	x	x	x		
New York Dock Railway	x					
Pittsburgh & West Virginia Railway Co., The	x	x	x	x	x	x

RAILROADS	Machinists	Boilermakers and Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers
	1	2	3	4	5	6
Reading Company	x	x	x	x	x	x
Philadelphia, Reading & Pottsville Telegraph Co.				x		
Toledo Terminal Railroad Company	x	x	x	x	x	
Washington Terminal Co., The	x	x	x	x	x	x
Western Maryland Railway Company	x	x	x	x	x	x

NOTES: -

- 1 - Includes repairmen in the Marine Department at Elberta, Michigan.
 - 2 - Includes Supervisors of Mechanics below rank of General Foremen in the Mechanical Dept., and employees of Cumberland Reclamation Plant (Rolling Mill) represented by System Federation No. 30, R. E. D.
 - 3 - Includes Supervisors of Mechanics below the rank of General Foremen in the Mechanical Dept. - represented by System Federation No. 30, R. E. D.
 - 4 - Items 4 (Compulsory Retirement) and 6 (Change in Article IV of the August 21, 1954 National Agreement) of standard carrier proposals with respect to October 15, 1962 Shop Crafts' notice not served.
 - 5 - Includes Stanley Yard of Ohio Central Division.
 - 6 - Includes Peoria & Eastern Ry. and L&JB&RR; also, Ohio Central Division, except Stanley Yard.
- * - In trusteeship. Any commitment subject to court approval.

FOR THE CARRIERS:

John A. ...

FOR THE ORGANIZATIONS:

Michael ...

September 25, 1964

WESTERN RAILROADS

LIST OF WESTERN RAILROADS REPRESENTED IN THE WESTERN CARRIERS' CONFERENCE COMMITTEE, AND JAMES H. WALSH, CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE, IN CONFERENCE WITH EMPLOYEES, HEREIN OR ON ABOVE COVERED 15, 1932, SERVED UPON INDIVIDUAL WESTERN RAILROADS BY THE GENERAL COMMITTEE, OR OTHER RECOGNIZED REPRESENTATIVES OF THE ORGANIZATIONS LISTED BELOW, AFFILIATED WITH THE RAILWAY EMPLOYEES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS:

1. International Association of Machinists
2. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forge and Helpers
3. Sheet Metal Workers' International Association
4. International Brotherhood of Electrical Workers
5. Brotherhood Railway Carmen of America
6. International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers

OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS TO EFFECTUATE THE PROPOSALS SET FORTH IN APPENDIX "A" ATTACHED THERETO, AND NOTICES WHICH WERE SERVED BY THE CARRIERS FOR CONCURRENT HANDLING THEREWITH.

This authorization is co-extensive with provisions of current schedule agreements applicable to employees represented by the organizations listed above.

Subject to the foregoing, and to indicated footnotes, the classes of employees covered by this authorization are indicated by "x" inserted in the numbered columns below:

RAILROADS	Machinists	Boilermakers and Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers
	1	2	3	4	5	6
Alton and Southern Railroad	x	x	x		x	x
Atchison, Topeka & Santa Fe Railway, The)	x	x	x	x	x	x
Gulf, Colorado and Santa Fe Railway)						
Panhandle and Santa Fe Railway)	x	x	x	x	x	x
Belt Railway Company of Chicago, The	x	x	x	x	x	
Butte, Anaconda and Pacific Railway	x	x	x	x	x	x
Camas Prairie Railroad	x	x	x	x	x	x
Chicago & Eastern Illinois Railroad	x	x	x	x	x	x
Chicago & Illinois Midland Railway	x	x	x	x	x	x
Chicago and North Western Railway (Including the former C&STP&O, M&STL, LAM, MI and Railway Transfer Company of the City of Minneapolis)	x	x	x	x	x	x
Chicago and Western Indiana Railroad	x	x	x	x	x	x
Chicago, Burlington & Quincy Railroad	x	x	x	x	x	x
Chicago Great Western Railway	x	x	x	x	x	x
Chicago, Milwaukee, St. Paul & Pacific RR.	x	x	x	x	x	x
Chicago, Rock Island & Pacific Railroad	x	x	x	x	x	x

RAILROADS	Mechanists	Boilermakers and Electricians	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers
	1	2	3	4	5	6
Chicago, East Pullman and Southern Railroad	x	x	x	x	x	
Colorado and Southern Railway, The	x	x	x	x	x	
Colorado and Wyoming Railway, The	x	x	x		x	x
Denver and Rio Grande Western Railroad, The	x	x	x	x	x	x
Des Moines Union Railway	x	x	x	x	x	x
Duluth, Missabe and Iron Range Railway	x	x	x	x	x	x
Duluth Union Depot & Transfer Co., The					x	
Duluth, Winnipeg & Pacific Railway	x	x	x	x	x	x
Elgin, Joliet and Eastern Railway	x	x	x	x	x	x
Fort Worth and Denver Railway	x	x	x	x	x	x
Galveston, Houston and Henderson Railroad	x	x	x		x	x
Great Northern Railway	x	x	x	x	x	x
Green Bay and Western Railroad	x	x	x		x	x
Houston Belt & Terminal Railway	x	x	x	x	x	
Illinois Central Railroad	x	x	x	x	x	x
Illinois Northern Railway	x	x	x	x	x	
Illinois Terminal Railroad	x	x	x	x	x	x
Joint Texas Division of the CRI&P RR and FT&W Ry.	x	x	x	x	x	
Kansas City Southern Railway, The	x	x	x	x	x	x
Kansas City Terminal Railway	x	x	x	x	x	x
Kansas, Oklahoma & Gulf Railway					x	x
Midland Valley Railroad	x	x	x	x	x	x
Lake Superior & Ishpeming Railroad	x	x	x	x	x	x
Lake Superior Terminal and Transfer Railroad	x	x			x	x
Los Angeles Junction Railway	x		x	x	x	x
Louisiana & Arkansas Railway	x	x	x		x	
Manufacturers Railway	x	x			x	
Minneapolis, Northfield and Southern Railway	x	x			x	
Minnesota Transfer Railway, The	x	x			x	x
Missouri-Kansas-Texas Railroad	x	x	x	x	x	x
Missouri Pacific Railroad	x	x	x	x	x	x
Missouri-Illinois Railroad	x	x	x	x	x	x
Northern Pacific Railway	x	x	x	x	x	x
Northern Pacific Terminal Co. of Oregon, The	x	x	x	x	x	x
Northwestern Pacific Railroad	x	x	x	x	x	x
Ogden Union Railway and Depot Co., The		x	x	x	x	x
Peoria and Pekin Union Railway Co.	x	x	x		x	
Peoria Terminal Co.					x	
Port Terminal Railroad Association	x	x			x	x
Pueblo Joint Interchange Bureau, The					x	
St. Joseph Terminal Railroad						x
St. Louis-San Francisco Railway)	x	x	x	x	x	x
St. Louis, San Francisco & Texas Railway)						
St. Louis Southwestern Railway	x	x	x	x	x	x
Saint Paul Union Depot Co., The	x	x	x	x		x

RAILROADS	Mechanics	Boilermakers and Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen and Oilers
	1	2	3	4	5	6
San Diego & Arizona Eastern Railway	x	x	x	x	x	x
Soo Line Railroad	x	x	x	x	x	x
Southern Pacific Company (Pacific Lines)	x	x	x	x	x	x
Southern Pacific Company (Texas and Louisiana Lines)	x	x	x	x	x	x
Spokane, Portland and Seattle Railway	x	x	x	x	x	x
Oregon Trunk Railway	x	x	x	x	x	x
Oregon Electric Railway	1-x	1-x	1-x	1-x	1-x	
Terminal Railroad Association of St. Louis	x	x	x	x	x	x
Texas and Pacific Railway, The					x	
Abilene and Southern Railway	x				x	
Fort Worth Belt Railway					x	
Texas-New Mexico Railway	x					
Weatherford, Mineral Wells and North-western Railway, The	x	x	x	x	x	x
Texas Mexican Railway, The	x	x	x	x	x	x
Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans	x	x	x	x	x	x
Toledo, Peoria & Western Railroad	2-x	2-x	2-x	2-x	2-x	2-x
Union Pacific Railroad	x	x	x		x	x
Union Railway (Memphis)	x	x		x	x	x
Union Terminal Company (Dallas), The	x	x	x	x	x	x
Wabash Railroad	x	x	x	x	x	x
Western Pacific Railroad, The					x	
Wichita Terminal Association, The						

NOTES: -

- 1 - This authorization also includes local Section 6 notice, dated July 12, 1962, served on the carrier by the shop crafts organizations.
- 2 - This authorization also includes local Section 6 notice, dated June 29, 1962, served on the carrier by the shop crafts organizations.

FOR THE CARRIERS:

William

FOR THE ORGANIZATIONS:

Michael Fox

September 25, 1964

SOUTHEASTERN RAILROADS

LIST OF SOUTHEASTERN RAILROADS REPRESENTED BY THE SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE, IN CONNECTION WITH NOTICES DATED ON OR ABOUT OCTOBER 15, 1962, SERVED ON VARIOUS INDIVIDUAL SOUTHEASTERN RAILROADS BY THE GENERAL CHAIRMAN, OR OTHER DESIGNATED REPRESENTATIVES, OF THE ORGANIZATIONS LISTED BELOW, COMPOSING THE RAILWAY EMPLOYEES' DEPARTMENT, REQUESTING TO RESERVE CERTAIN WORK TO SHOP CRAFT EMPLOYEES AND PROVIDE PROTECTIVE BENEFITS FOR DISPLACED EMPLOYEES; AND NOTICES WHICH WERE SERVED BY THE CARRIERS FOR CONCURRENT HANDLING THEREWITH.

This authorization, as to the respective classes of employees, is co-extensive with provisions of current schedule agreements applicable to employees represented by the organizations listed below.

ORGANIZATIONS

1. International Association of Machinists
2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
3. Sheet Metal Workers' International Association
4. International Brotherhood of Electrical Workers
5. Brotherhood Railway Carmen of America
6. International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers

Subject to the foregoing the classes of employees covered by this authorization are indicated by "x" in the appropriate columns below:

Railroads	Machinists	Boilermakers- Blacksmiths	Sheet Metal Workers	Electrical Workers	Carmen	Firemen, Oilers, Shop Laborers
	1	2	3	4	5	6
Atlanta & West Point						
Western Railway of Alabama	x	x	x	x	x	x
Atlanta Joint Terminal	x	x	x	x	x	x
Atlantic Coast Line	x	x	x	x	x	x
Chesapeake & Ohio	x	x	x	x	x	x
Clinchfield	x	x	x	x	x	x
Georgia	x	x	x	x	x	x
Gulf, Mobile & Ohio	x	x	x	x	x	x
Kentucky & Indiana Terminal	x	x	x	x	x	x
Louisville & Nashville	x	x	x	x	x	x
Norfolk Southern	x	x	x	x	x	x
Norfolk & Portsmouth Felt Line	x	x	x	x	x	x
Norfolk & Western	x	x	x	x	x	x
Richmond Fredericksburg & Potomac	x	x	x	x	x	x
Seaboard Air Line	x	x	x	x	x	x

FOR THE RAILROADS:

W. H. Marshall

FOR THE EMPLOYEES:

Wm. H. Marshall

VICE-PRESIDENT
N. G. ROEISON
Brotherhood Railway Carmen of America
4190 Cornhusker Hwy., Lincoln, Neb. 68504

A. L. KOHN
J. B. CARPENTER

W. J. PECK
E. A. WINTER

J. F. STEWART

C. P. WELLS
A. C. MANLEY

PRESIDENT
E. J. HAYES
Sheet Metal Workers' International Association
545 So. Broadway, Aurora, Illinois 60005

SECRETARY-TREASURER
G. R. DeHAGUE
International Association of Machinists
2516 Yoder Dr., Burlington, Iowa 52601

Shops 2016-68
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers

International Brotherhood of Electrical Workers

Brotherhood Railway Carmen of America

International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers

95
System Federation No. 95

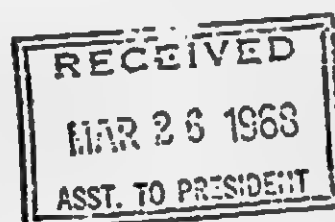
Railway Employees' Department of the A.F.L. - C.I.O.

OFFICE OF THE SECRETARY-TREASURER

2516 Yoder Dr.
BURLINGTON, IOWA 52601

March 25, 1968

Reg 1435
Mr. A. E. Egbers
Ass't. to President
CB&Q R.R. Company
Chicago, Illinois



Dear Sir:

Please consider this letter as the usual and customary thirty-day notice under the Railway Labor Act, as amended, of our desire to revise the September 25, 1964 Agreement to effectuate the provisions set forth in "Appendix A" attached hereto, such provisions to be effective April 24, 1968.

It is our desire that conferences on this notice be held at the earliest practicable date and in any event prior to April 24, 1968, and that you, within ten days after receipt of this notice, suggest a date, time and place for this conference.

This notice is served in behalf of the employes of the Chicago, Burlington and Quincy Railroad Company represented by the following organizations:

1. International Association of Machinists and Aerospace Workers
2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers
3. Sheet Metal Workers' International Association
4. International Brotherhood of Electrical Workers
5. Brotherhood Railway Carmen of America
6. International Brotherhood of Firemen & Oilers

EXHIBIT B TO
COMPLAINT
(2 PAGES), AND
APPENDIX A

N. G. ROBISON
Brotherhood Railway Carmen of America
410 Cornhusker Hwy., Lincoln, Neb. 68504

E. J. HAYES
Sheet Metal Workers' International Association
545 So. Broadway, Aurora, Illinois 60505

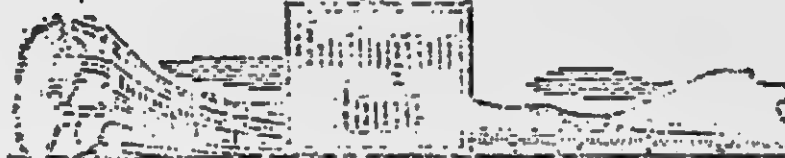
G. R. DeHAGUE
International Association of Machinists
2516 Yoder Dr., Burlington, Iowa 52601

A. L. KOHN
J. B. CARPENTER

W. J. PECK
E. A. WINTER

J. F. STEWART

C. P. WELLS
A. C. MANLEY



System Federation No. 95

Railway Employees' Department of the A.F.L. - C.I.O.

OFFICE OF THE SECRETARY-TREASURER

2516 Yoder Dr.

BURLINGTON, IOWA 52601

International Brotherhood of Boiler-
makers, Iron Ship Builders, Blacksmiths,
Forgers and Helpers

International Brotherhood of Electrical
Workers

Brotherhood Railway Carmen of America

International Brotherhood of Firemen,
 Oilers, Helpers, Roundhouse and
 Railway Shop Laborers

- 2 -

comprising System Federation No. 95 of the Railway Employees' Department
of the American Federation of Labor and Congress of Industrial Organizations.

Very truly yours,

E. J. Hayes
President, System Federation No. 95
and General Chairman, SMWIA

C. P. Wells
General Chairman, IEF&O

G. R. DeHague
Secretary, System Federation No. 95
and General Chairman, IAMAW

W. J. Peck
General Chairman, IBEW

A. L. Kohn
General Chairman, IBBIS&F&H

A. L. Kohn
General Chairman, IBBIS&F&H

W. J. Peck
General Chairman, BRCA

APPENDIX A

Article II - SUBCONTRACTING - of the September 25, 1964 Agreement shall be amended as follows:

(a) Section 1 of Article II shall be changed to provide:

1. That work set forth in the Classification of Work Rules and/or work generally recognized as work of the craft or crafts parties to the agreement shall not be contracted except by special agreement on specifically described work entered into in each instance between the properly designated representative of the carrier and the general chairman of the craft involved.
2. That the unit exchange, purchase of new equipment or component parts, the manufacturing, repairing and rebuilding of which is work set forth in the Classification of Work Rules and/or work generally recognized as work of the craft or crafts parties to the agreement shall be prohibited except where special agreement as to specifically described unit exchange, new equipment or component parts is entered into between the properly designated representative of the carrier and the general chairman of the crafts involved.
3. That the work set forth in the Classification of Work Rules and/or work generally recognized as work of the craft or crafts parties to the agreement shall apply to leased equipment to the same extent that it applies to carrier-owned equipment.

(b) Section 2 of Article II shall be changed to provide:

1. That if the carrier believes it to be necessary to subcontract work, unit exchange or to purchase new equipment or component parts, the work of which is covered by the Classification of Work Rules and/or work generally recognized as work of the craft or crafts parties to the agreement, it shall give to the General Chairman of the craft or crafts involved, notice thereof along with its reasons therefor, together with supporting data, in writing.
2. The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the carrier or the organization may proceed to process the dispute to a conclusion as hereinafter provided.

(c) Section 3 of Article II shall be deleted.

(d) Section 4 of Article II shall not be changed.

Article VI - RESOLUTION OF DISPUTES - shall be amended as follows:

(a) Section 14 - REMEDY - of Article VI, shall be changed to read as follows:

"In case of any violation of Article II, the employe or employees who would have performed such work if it had been performed without violation of said Article II, shall be compensated on the same basis as if he or they had performed the work, and the employe or employees designated in the claim will be considered as the employe or employees who would have performed such work if it had been performed without violation of Article II."

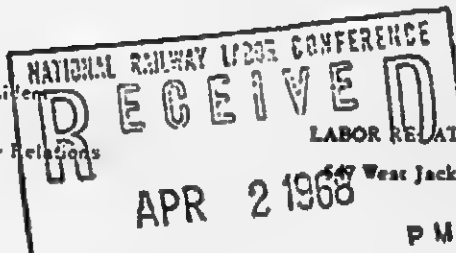
(b) A new section shall be added to Article VI of the agreement providing that no time limits of any description shall apply to the filing and progressing of claims arising under Articles I and II of the agreement including the filing of unadjusted claims with the Special Board of Adjustment for adjudication.

(c) A new section shall be added to Article VI of the agreement providing where the carrier contracts out work, unit exchanges or purchases new equipment or component parts without giving advance notice to the General Chairman of the craft or crafts involved, it shall be considered a violation of the agreement and claims filed as a result thereof shall be allowed as presented.

BURLINGTON LINES

Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
Fort Worth and Denver Railway Company

A. E. EGBERS
Asst. to the President
G. M. YOUNG
Director of Labor Relations



LABOR RELATIONS AND EMPLOYMENT DEPARTMENTS

547 West Jackson Boulevard - Chicago, Illinois 60606

P M March 29, 1968

C. J. MAHER
E. J. CONLIN
J. D. DAEON
H. C. LOUCKS
Staff Officers
J. GILLETTE
Supv. of Employment
R. W. TODD
Personnel Officer

Shops-2016-68

Please Recd

AM 7:8:9:10:11:12: 1:2:3:4:5:6

Mr. E. J. Hayes
President
System Federation No. 95
General Chairman, SAAWIA
Aurora, Illinois

Mr. G. R. DeHague
Secretary-Treasurer
System Federation No. 95
General Chairman, IAMBAW
Burlington, Iowa

Mr. A. L. Kahn
General Chairman, IBISBBF&H
Milwaukee, Wisconsin

Mr. C. P. Wells
General Chairman, IBF&O
Denver, Colorado

Mr. W. J. Peck
General Chairman, BEW
St. Paul, Minnesota

Mr. N. G. Robinson
General Chairman, BRCA
Lincoln, Nebraska

Gentlemen:

This will acknowledge your letter of March 25, 1968, serving notice under Section 6 of the amended Railway Labor Act to revise Article II, Subcontracting, and Article VI, Resolution of Disputes, of the September 25, 1964 Agreement.

Your Section 6 notice of March 25, 1968 was received here on March 26, 1968. I can meet with you to discuss this notice at 10:00 AM on Thursday, April 25, 1968, in my office at Room 1305, 547 West Jackson Boulevard, Chicago, Illinois. Will you please advise if this time and date is satisfactory.

The Section 6 notice served under date of March 25 is, insofar as it deals with contracting out work, practically identical to that which you served upon me under date of October 15, 1962. Therefore, our counter proposal to your Section 6 notice will follow generally the counter proposal served under date of November 15, 1962 on System Federation No. 95. Our modified counter proposal reads as follows:

-1-

EXHIBIT C TO
COMPLAINT
(2 pages)

"Eliminate all agreements, rules, regulations, interpretations and practices, however established, which in any way handicap or interfere with the Carrier's right to:

1. Contract out work.
2. Lease or purchase equipment or component parts thereof, the installation, operation, maintenance or repairing of which is to be performed by other than employees of the Carrier.
3. Trade in and repurchase equipment or exchange units."

Also included as part of our counter proposal is the following modification to the September 25, 1964 Agreement (Mediation Agreement A-7030):

"Eliminate entirely Section 7 of Article I, providing for lump sum separation allowances."

It is my request that this counter proposal also be discussed at the initial conference on April 25, 1968, and that the Organizations' proposal and the Carrier's counter proposal be treated as a single controversy thereafter.

Will you please acknowledge receipt.

Yours truly,

C

A. E. Eggers

cc: Messrs. R. E. Taylor
J. F. Griffin ✓

Attached please find copy of Organizations' Section 6 notice dated March 25, 1968. I will appreciate advice from Mr. Griffin if he hears of any other railroads receiving a similar Section 6 notice.

A. E. Eggers

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

DOCKET ITEM 4

Filed: March ____, 1969

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States District Judge

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

Civil Action No. _____

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO;
SYSTEM FEDERATION NO. 95, Railway Employees'
Department, AFL-CIO; INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS; INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS,
FORGERS & HELPERS; SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION; INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS; BROTHERHOOD OF
RAILWAY CARMEN OF UNITED STATES AND CANADA;
INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS,

Defendants.

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff hereby moves this Court to enter a preliminary injunction restraining defendants, the Presidents, Executive Councils, General Chairmen, and other officers of any of the defendants, the agents, employees and members of any of the defendants, and all persons acting in concert with them, from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of plaintiff pending a final determination of this cause.

The grounds for this motion are that said strike will be unlawful and that immediate and irreparable damage, loss and injury will result to plaintiff, to its shippers and passengers, and to the public before a final hearing can be had on the complaint herein, as more fully appears from the

verified complaint and the affidavit of B. G. Upton filed in this action.

Respectfully submitted,

Francis M. Shea
Ralph J. Moore, Jr.
Martin J. Flynn
Richard M. Sharp

734 Fifteenth Street, N. W.
Washington, D. C. 20005

Thomas G. Schuster

547 West Jackson Boulevard
Chicago, Illinois

Attorneys for Plaintiff

AFFIDAVIT OF B. G. UPTON ON BEHALF OF PLAINTIFF
WITH APPENDICES A, B, D AND E

DOCKET ITEM 5

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, et al.,

Defendants.

Civil Action No. _____

639-69

AFFIDAVIT OF B. G. UPTON
ON BEHALF OF PLAINTIFF

B. G. Upton, being first duly sworn according to law, deposes
and states as follows:

1. I am a staff officer, labor relations, for the plaintiff
Chicago, Burlington & Quincy Railroad Company (hereinafter called
"Burlington" or "carrier") and have held that position since March 1,
1968. In that position, I report to Mr. A. E. Egbers, Assistant to the
President - Labor Relations. Prior to assuming my present position, I
was, from October 1963 until March 1968, a staff assistant to the Chair-
man of the Southeastern Carriers' Conference Committee. Prior to that,
I was employed as secretary to the Manager of the Bureau of Information of
the Southeastern Railways, a position that I assumed in
September 1961. I also served as a carrier member of the National Rail-
road Adjustment Board, 4th Division, from July 1966 through April 1968.

2. I have attended and participated in almost all of the mediation
sessions between the Burlington and the defendant unions in this dispute as
one of the negotiators for the Burlington. While I was not employed by the
Burlington at the time of the dispute resulting in the September 25, 1964
national agreement that the defendant unions in this dispute seek to
alter radically, I was employed at that time, as I have said, by the
Southeastern Carriers' Conference Committee. That committee, together with
the two other regional carriers' committees and the National Railway Labor

Conference, represented the Burlington and most of the nation's carriers in the negotiations, mediation and Presidential Emergency Board which culminated in the 1964 national agreement. Thus, the statements in this affidavit are made upon my personal knowledge or upon information obtained by me from my superiors and colleagues in the regular course of business.

3. The purpose of this affidavit is to set forth certain facts relating to the dispute alleged in the verified complaint in the above-entitled action, including facts relating to the existing national agreement of September 25, 1964, which the defendants now seek virtually to wipe out in its application to the Burlington. This affidavit will supplement the allegations in the complaint.

4. The defendants in this action include 6 standard railway labor organizations which are generally known in the industry as the "Shop Unions," representing employees in the 15 Interstate Commerce Commission designated classes of "shop crafts employees" and 7 additional classes of shop employees. The other defendants are organizations through which, to some extent, the Shop Unions function in their representation of shop employees on the Burlington and other carriers.

5. The basic issue in this dispute, which arose out of the defendants' March 25, 1968 notice served upon Burlington purportedly under section 6 of the Railway Labor Act, is the "contracting out" or "subcontracting" by carriers to persons other than their employees of certain types of work, rather than having such work performed by carrier employees. The identification of the work in question--in other words, the work the allocation of which may be subject to some restrictions upon management prerogatives--depends upon what are known in the industry as the "classification of work rules" applicable to the classes or crafts of employees represented by defendants, though, as I will point out later, the defendants' later demands in this dispute would apply to additional work as well. Putting aside the later demands, however, the issue of contracting out under the existing national agreement of September 25,

1964 (see Exhibit A to the complaint), under the defendants' purported section 6 notice (see Exhibit B to the complaint), and under decisions of the National Railroad Adjustment Board prior to the existing agreement, has related to work set forth in the classification of work rules.

6. The classification of work rules for each craft are contained in collective bargaining agreements between Burlington and defendants, and I am informed and believe that substantially identical rules are contained in agreements in effect upon most, if not all, other carriers. The rules were formulated on a standard, nationwide basis for all railroad shop employees by the United States Railroad Administration in 1918, when the carriers were under Federal control. A national agreement was signed by the Railroad Administration and defendant Railway Employees Department, AFI-CIO, on September 20, 1919 setting out the rules in greater detail, and, after the carriers were returned to private ownership in 1920, the Railroad Labor Board, which was established by the Transportation Act of 1920, made some further revisions in the Rules. Addendum No. 6 to Decision No. 222, United States Railroad Labor Board, November 29, 1921. In sum, however, it may be said that the nationwide classification of work rules adopted during and immediately after World War I have remained largely unchanged to the present time and continue to be substantially identical on almost all railroads. I have included as Appendix A to this affidavit the classification of work rules for machinists, boilermakers, blacksmiths, sheet metal workers, electricians, and carmen, as they appeared in the national agreement of 1919 and as they appear in the current agreement between Burlington and defendants, both to corroborate my statements in this paragraph and to identify the work that is regarded by most of the defendants as the "property" of their respective crafts.

7. In discussing the classification of work rules, I do not mean to suggest that they were promulgated by the Railroad Administration for the purpose of identifying work that carriers were required to have performed by their employees rather than by independent contractors.

Rather, their purpose was to divide work among the crafts of carrier employees and provide a basis for determining levels of compensation and other rights. I do not believe it appropriate to extend this affidavit to discuss at length the history of contracting out prior to the 1964 national agreement, but the practice was in existence to varying extents among the nation's carriers at the time that the classification of work rules were promulgated, it continued from that time until the 1964 agreement, and of course it continues to the present time. After the carriers were returned to private control in 1920, however, there were a number of decisions of the Railroad Labor Board and, later, the National Railroad Adjustment Board, which imposed limitations upon contracting out work. The Railway Labor Board decisions, during the period of its existence (1920-26), struck down drastic attempts by certain carriers to contract out work on a wide-spread basis but sustained the positions of other carriers as to their rights to contract out particular work when the carriers deemed that practice appropriate as a matter of business judgment. Beginning in 1934, when the Railway Labor Act was amended to create the National Railroad Adjustment Board, the Second Division of that Board was given jurisdiction over disputes involving the shop unions. Until the period of diesclization in the 1940's however, the shop unions were not very active in protesting the contracting out of work by the carriers. Beginning at that time, however, and increasingly in the 1950's, they frequently challenged in the Second Division the management decisions of the carriers on contracting out work alleged to be within their classification of work rules. The Second Division sustained the union challenges in a minority of awards, but, in the majority of its awards, it did not substantially impinge upon the prerogative of management to contract out work.

8. The next stage of the history of this dispute began with section 6 notices served by the unions that are defendants here upon most of the nation's carriers, including the Burlington, in October 1962. Those

notices demanded far-reaching rules changes designed to stabilize employment and to grant the defendants a veto-power on contracting out work, among other things. The notices, the history of the national handling of the dispute, and the recommendations of Presidential Emergency Board No. 160 to resolve the dispute are all contained in the report of that Board, dated August 7, 1964, a copy of which I have attached as Appendix B to this affidavit, so I will not discuss them at length here. As to the progress of the dispute, however, I would like to point out the Board's comment that, while the unions' notices "as originally framed " sought to achieve a veto-power over management decisions, subsequent handling made it apparent that their demands were much more limited in that,

"the organizations were asking that they be given notice to enable them to be consulted before changes which might affect their members adversely were put into effect, as well as the opportunity to test the reasonableness of the carriers' actions under criteria to be recommended by this Board and negotiated by the parties." Appendix B, at p. 7.

9. The recommendations of Board 160 were, for the most part, adopted in the existing national agreement of September 25, 1964 (a copy of which is attached as Exhibit A to the complaint in this action). Article I of the agreement extended the broad employee protection benefits of the so-called "Washington Job Protection Agreement," a national agreement entered into in May 1936, to cover employees who were adversely affected by contracting out of work, by trade-in or re-purchase of equipment or unit exchange, by lease or purchase of certain equipment or component parts, and by certain other matters. Article II provided that "work set forth in the classification of work rules" of the shop unions could not be contracted out except in accordance with the procedures outlined in that article. Article II of the agreement reads, in full, as follows:

"The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of sections 1 through 4 of this Article II.

Section 1 - Applicable Criteria -

Subcontracting of work, including unit exchange, will be done only when (1) managerial skills are not available on the property; or (2)

skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment, or component parts.

Section 2 - Advance Notice - Submission of Data - Conference -

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions. The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the carrier may, notwithstanding, proceed to subcontract the work, and the organization may process the dispute to a conclusion as hereinafter provided.

Section 3 - Request for Information When No Advance Notice Given -

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Section 4 - Machinery for Resolving Disputes -

Any dispute over the application of this rule shall be handled as hereinafter provided.

The "machinery" referred to in section 4 of Article II is contained in Article VI of the agreement. Generally, that article sets up a "Shop Craft Special Board of Adjustment" to decide as expeditiously as possible disputes arising under Articles I and II. The membership and jurisdiction of the Board, the method of submitting disputes, the time limits for submission of disputes, and the limitations upon the remedy for viola-

tions by carriers of the subcontracting provisions of Article II are all set forth in the agreement, and I will not discuss them at this point.

9a. The Burlington is a member of the National Railway Labor Conference. The National Railway Labor Conference represents, and since January 1, 1963, has represented, over ninety-five percent of the nation's Class I Linehaul Rail Carriers in national labor negotiations with the Shop Unions and other labor organizations. The Burlington is also a member of the Western Carriers' Conference Committee. The Western Carriers' Conference Committee, the Eastern Carriers' Conference Committee, and the Southeastern Carriers' Conference Committee are, and since January 1, 1963, have been divisions of the National Railway Labor Conference organized upon a regional basis which represent those members of the National Railway Labor Conference operating principally within their respective regions in regional and national labor negotiations with the Shop Unions and other labor organizations. For many years prior to the organization of the National Railway Labor Conference on January 1, 1963, the said Carriers' Conference Committees, collectively, represented most of the nation's Class I Linehaul Rail Carriers, and the Western Carriers' Conference Committee represented the Burlington in national labor negotiations with the Shop Unions and with other labor organizations.

9b. Where notices, that have proposed changes in agreements that are national in scope or in agreements dealing with subject matters which are of national concern, have been served under Section 6 of the Railway Labor Act (45 U.S.C. § 156) by the Shop Unions upon carriers represented by the Carriers' Conference Committees or the National Railway Labor Conference, or by such carriers upon the Shop Unions, for many years the custom and practice has been for collective bargaining with respect to the dispute created by such notices to be carried on by means of what is often referred to -- and what I have referred to above -- as "national handling." In national handling, bargaining is conducted by the National Railway Labor Conference and/or the Carriers' Conference Committees (through their

officers, employees or agents) on behalf of interested carriers with the Presidents or other national officers, employees or agents of the Shop Unions. Interested carriers are represented by the National Railway Labor Conference and/or the Carriers' Conference Committees in any proceedings before the National Mediation Board, before any board of arbitration established under Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§ 157, 158), and before any emergency board appointed pursuant to Section 10 of the Railway Labor Act (45 U.S.C. §160) relating to the dispute, and a national agreement binding upon such carriers may be entered into by the National Railway Labor Conference and/or the Carriers' Conference Committees. The dispute referred to in paragraphs 8-9 above was handled and settled in this fashion. The shop unions continue to engage in national handling with respect to other national issues, such as wages. National handling similar to that described above also has been customary for many years with respect to disputes as to proposed changes in national agreements or in agreements dealing with subject matters of nationwide concern, arising under the Railway Labor Act, by the labor organizations other than the Shop Unions and carriers represented by the National Railway Labor Conference and/or the Carriers' Conference Committees. Such "national handling" has successfully settled numerous disputes of the kinds referred to in the preceding paragraph of this affidavit and in this paragraph.

10. At the present time, the Burlington and other carriers have had a little over 4 years of experience under the existing national agreement. From December 1964--when Special Board of Adjustment No. 570 was established under the agreement--through December 1968 the Special Board has rendered 126 awards in cases involving Articles I and II of the 1964 Agreement. Twenty of those awards involved the Burlington. Of the 20 Burlington awards, 5 sustained the employees' claims, 14 denied or dismissed the employees' claims, and one award sustained in part and denied in part the employees' claims. The unions' vigorous attempts to block the Burlington's right to contract out work under the 1964 agreement thus have been recognized by the Special

Board in most instances to be without merit. I am attaching as Appendix C to this affidavit two of the Awards of Board 570 on the Burlington--Awards No. 58 and No. 125--as examples of the extent to which the unions have sought--albeit unsuccessfully--to restrict the right of management to subcontract work. Neither those awards nor the total number of awards fully illustrates the defendant unions' efforts unreasonably to tie the hands of management, however, since the unions challenged many transactions on the Burlington that they did not progress to the Special Board.

11. My discussion of the events that led to the defendants' notices of March 25, 1968, has been rather lengthy, but I believe that some detail is necessary in order to place the current dispute in proper perspective. In any event, the defendants, through defendant System Federation 95, on March 25 served demands upon the Burlington that would, if agreed to, not only radically alter the 1964 national agreement with respect to its application to the Burlington but also have the effect of prohibiting virtually any subcontracting of work or acquisition of rolling stock and other essential equipment except with the unions' consent. That statement may appear to be strong, but an examination of the March 25 notice (see Exhibit B to the complaint in this action) and a comparison of that notice with the existing national agreement (see Exhibit A to the complaint) can lead, in my judgment, to no other conclusion, for the following reasons:

(a) The notice would change Article II, section I, so as to prohibit any subcontracting of work set forth in the classification of work rules except with the agreement of the union involved in the particular transaction. Emergency Board 160 noted, of course, that the 1962 notices of these defendants would have imposed the same veto power, but that the unions' demands in fact were much more limited. See p. 5, supra. But the unions, having convinced Emergency Board 160 that they did not really mean to seek such far-reaching control over management decisions and having won from that Board favorable recommendations on the issue of subcontracting that are now part of a national agreement, have now come back with the same far-reaching demand that they made in 1962. Further, as I will discuss in more detail below, the unions here have

not relaxed their demands in the course of negotiations to any significant extent.

(b) In contrast to the 1964 agreement, the notice applies not only to unit exchange but also to the purchase of new equipment or parts of equipment serviced by the crafts represented by the unions. Thus, for example, since the carmen's classification of work rules state that carmen's work "shall consist of building . . . passenger and freight cars" (see Appendix A hereto), Burlington would not be permitted to buy a new freight or passenger car unless the carmen's union agreed to permit it to do so. Since the machinists' and electricians' classification of work rules cover servicing of locomotives, Burlington would not be permitted to purchase locomotives without the consent of the unions. Further, and also in contrast to the 1964 agreement, the notice would apply not only to the purchase of equipment but also to the leasing of equipment.

(c) The existing agreement requires the carriers to give advance notice to the unions of contemplated subcontracting transactions except in the case of "minor transactions." For example, the carrier is not required to notify the unions in the case of a transaction that involves only a few hours of work, though, under Article II, section 3, the union can still challenge such a transaction and request information about it. But under the March 25 notice there is no exception for minor transactions. Every item, no matter how inconsequential, must be the subject of advance notice to the unions.

(d) The existing agreement embodies the recommendations of Board 160 as to specified criteria for testing the reasonableness of management decisions to contract out work --such as significantly greater cost and unavailability of skilled manpower or necessary equipment --but the March 25 notice eliminates those criteria entirely, substituting for them one criterion--the consent of the union. In that light, I have noted that the unions convinced Board 160 that what they really wanted was the

"opportunity to test the reasonableness of the carriers' action under criteria to be recommended by this Board and negotiated by the parties." (See p. 5, supra.) But now the notice would eliminate those criteria, and the union representatives in negotiations stated also that elimination of the criteria was one of their principal objectives. They also stated in the negotiations that one of the principal reasons for service of the March 25 notice was the fact that they had lost the majority of the Special Board awards. In short, what they had found was that neutrals who were enjoined to determine the propriety of Burlington's contracting out certain work on the basis of the objective standards provided in the 1964 agreement were reaching decisions that the unions did not like.

(c) The 1964 agreement provided that, if the parties failed to reach agreement on an issue of subcontracting, the carrier could proceed to contract out the work and the unions could progress the dispute through the Special Board. Thus, the carrier's hands would not be completely tied while the Board was progressing the dispute, though the carrier would of course run the risk of payment of damages in the event of an adverse decision. It seems difficult to conceive of any other procedure, since the unions could in most cases preclude subcontracting if they could delay it merely by filing a claim with the Board. Witness, for example the situation in the two awards attached as Appendix C, hereto. In Award 58, the union complained about the transaction (after it had occurred) on May 9, 1966, and the award was not rendered until October 24, 1967. In award No. 125, Burlington notified the union of a contemplated transaction on January 16, 1968, and the award was not rendered until December 17, 1968. Yet the March 25 notice would eliminate from Article II, section 2, of the 1964 agreement the right of the carrier to contract out the work while the dispute was being progressed.

(f) The March 25 notice would amend Article VI of the 1964 agreement, concerning resolution of disputes, to magnify the risk to the carrier to the point that contracting out work that the carrier reasonably believed to be beyond the bounds of the unions' classification of work rules would be highly unlikely. In the first place, Article VI, section 14, provides that in the event of a wage loss resulting from a violation of the contracting out provisions, "the Board's decision shall not exceed wages lost and other benefits necessary to make the employee whole." The March 25 notice eliminates that limitation and also provides that the employee designated by the union will be considered as "the employee . . . who would have performed such work" Thus, the Board would not be able to determine whether the claimant lost anything by a subcontracting transaction-- in other words, whether he was the employee who would have performed the work -- but rather must accept the union's designation. Further, even though that employee might have worked a full day plus overtime hours on the day that the work was subcontracted, the Board would be required to award him additional compensation for the number of hours that the work required. Indeed, in the event of a failure to give the notice required by the proposed agreement, the carrier would be required to pay claims "as presented," without any limitation whatsoever as to amount. Finally, the notice would eliminate any time limits for the filing or progressing of claims, so that a claim, no matter how stale, could be progressed at any time. The effect, and, in my judgment, the purpose of these proposed changes to the resolution of disputes provisions of the 1964 agreement is to eliminate the rationale of Board 160 -- the protection of employees who actually lose work and money as a result of improper subcontracting -- and substitute the rationale that, if the risk of penalties to the carrier is sufficiently high and it is virtually stripped of defenses to claims, it will forego the contracting out of almost all work.

12. While the Burlington considered that it was not required under the Railway Labor Act to bargain with the defendants upon the March 25 notice, my superior, Mr. Egbers, nonetheless advised the defendants by letter of March 29, 1968, that we would be prepared to meet with them on April 25, and also served counterproposals upon them. (See Exhibit C to complaint). At the April 25 meeting, the Burlington was represented by staff officers E. J. Conlin and J. D. Dawson, who advised me that the respective notices of the parties were discussed with representatives of the defendants but that no progress was made. By letter of April 26, 1968, to the General Chairmen on the Burlington of each of the defendant shop unions, Mr. Egbers confirmed the conference and called attention to the fact that any bargaining to amend the subcontracting provisions of the 1964 national agreement was required to be conducted through national handling.

13. On July 5, 1968, though only one conference between the parties had been held, the defendants applied to the National Mediation Board for its mediatory services, and, on August 19, 1968, the NMB docketed the matter as case No. A-8428. Mediator Charles Peacock was assigned by the NMB to commence mediation on October 24, but, in the meantime further conferences were held between the parties on September 25 and October 17. The Burlington

reserved its position that the dispute was required to be handled nationally, but, though it did not believe that it was required to bargain with defendants on the March 25 notice, it remained willing to discuss the matter in the hope that some amicable resolution of the dispute could be reached. Again, Burlington was represented at the September 25 and October 17 conferences by Mr. Conlin and Mr. Dawson, who reported to me that the defendants were unwilling to modify their notice and that G. R. De Hauge, Secretary of System Federation No. 95 and General Chairman of the Machinists Union, explained that their notice meant "stop sub-contracting." At those conferences, the Burlington representatives asked whether an agreement could be worked out as to the Burlington that would terminate upon its then-imminent merger with the Great Northern and Northern Pacific, but the unions refused to consider that approach.

14. Mediation under the auspices of the NMB began on October 24 when Mediator Peacock met with the defendants, followed by a meeting with Mr. Dawson and myself on October 25. The first joint meeting was held on October 28, with Mr. Dawson and myself again representing the Burlington. The mediator asked that the unions' notice be read section by section for purposes of discussion, and we then pointed out that the notice was improper in that it would give the unions a veto over any Burlington plans to subcontract. Mr. De Hauge then stated that if the unions had been winning the cases before the Special Board of Adjustment they would not have served their notice, and he then complained that there were instances in which Burlington had not given the appropriate advance notice of subcontracting. After a further discussion of the application of the 1964 agreement, the meeting adjourned.

15. Further mediations sessions were held on October 29, November 1, and November 6. Mr. Dawson and I represented Burlington at all of those meetings, and the parties and the mediator discussed problems under the 1964

agreement. The gist of the discussion may be summed up in the comment of Mr. Hayes, the President of System Federation 95, at the October 29 meeting that the unions were "fed up" with the subcontracting provisions of the 1964 agreement and wanted no part of it. At that same meeting, I suggested that the unions' problems might be resolved by a memorandum of agreement that would set out in detail the application of the 1964 agreement, but the unions said they were not interested.

16. At the next mediation session on November 7 and 8, my superior, Mr. Egbers, joined Mr. Dawson and myself in an effort to help break the impasse that existed. He told the unions that if they would tell us the kind of notice and supporting information that they wanted, we would be happy to furnish it to them, and he also stated that Burlington would be willing to pay moving expenses to move employees to places where work forces were short, but Mr. Peck, General Chairman of the Electrical Workers, said they probably would not be interested in that. Again, the application of the 1964 agreement was discussed but no progress was made.

17. At the next meeting on November 11, we delivered to the mediator and the unions a written proposal that would retain the 1964 national agreement but would add a memorandum of understanding between the Burlington and the unions that would (1) provide definitions of terms such as "minor transactions" and "significantly greater costs," (2) list the kinds of data that Burlington would be required to furnish to the unions to support the reasonableness of subcontracting, (3) require discussion with the unions before subcontracting work not specifically set forth in the classification of work rules but currently performed by the unions, and (4) deal with other problems that had been discussed at the previous mediation sessions. Mr. Egbers explained that the proposal was intended to resolve the problems that the unions had raised.

18. At the following meeting, on November 14, the unions delivered a purported response to our proposal. I am attaching that union proposal

as Appendix D to this affidavit, in order to illustrate the intransigence of the unions in refusing to alter in any significant manner the far-reaching demands made in their notice of March 25. The November 14 proposal provided that the 1964 agreement would be "amended pursuant to notice of March 25, 1968, Appendix A." In other words, after months of bargaining the unions were not prepared to budge at all from the demands that they started with. The proposal continued that an agreement would be entered to govern the application of the amended agreement, to include a definition of minor transaction, but the definition was rendered meaningless because "advance notice will be required" for such transactions. The only purpose for the term "minor transactions" in the 1964 agreement is to identify those transactions for which advance notice is not required! The unions in their proposal were, of course, quite willing to accept the concessions made by Burlington in its November 11 proposal and included them in their proposal. But as to the Burlington's willingness to talk to the unions prior to contracting out certain work not included within the classification of work rules, they made clear that such work "shall not be contracted until an agreement is reached." Finally, in the event that their March 25 notice left any doubt as to whether employees designated by the union as claimants were to be awarded compensation even though they suffered no losses, the November 14 proposal provided that the compensation allowed by the Special Board was "to be in addition to any other compensation received by said employee or employees during the time the work was being subcontracted."

19. Mediation sessions continued on November 18, 19, 20 and 21 but the unions, while they continued to complain about specific problems under the application of the 1964 agreement, also continued to demand the acceptance in full of the demands made in their March 25 notice. On November 18 we submitted a proposal defining terms that they had complained

about, and we also agreed to provide precisely the supporting data that they had listed as required by them. Their written response to our concessions, delivered to us on November 20, made it clear that "the Federation has not changed their original intention as expressed in" the notice of March 25, 1968, and that we might as well recognize "that Article II will be amended as proposed."

20. At that point, mediation was recessed by the NMB, over the objection of the unions, in response to our request. On November 20, a statutory court in this District unanimously upheld the ICC's order approving our merger with the Great Northern and Northern Pacific, and all of Burlington's labor relations officers were to be occupied fully with the labor protective matters necessary to be resolved in connection with the imminent consummation of the merger. It later developed that the Justice Department appealed to the Supreme Court, so that the merger has not been consummated. In any event, the NMB agreed to recess mediation, though the unions protested that the NMB should release the dispute, thus putting them in a position to strike.

21. Mediation resumed on January 14, and continued through January 22, 1969. Mediator Peacock met with the unions on the 14th and with Mr. Dawson and myself on the 15th. At the meeting on the 15th, we reviewed what we had offered thus far to the unions and, stated that, if it would offer hope for an agreement, we would consider making substantial revisions to Article II (the subcontracting provisions) of the 1964 agreement. The mediator advised us on January 16 that he had discussed our concession with the unions and had asked them to make a proposal as to what kind of revisions they would be willing to accept. On January 17, the mediator delivered to us the unions' final word as to resolution of the dispute--a proposal a copy of which I have attached as Appendix E to this affidavit. I should point out that the proposal purported to deal

only with Article 11 of the 1964 agreement, but the unions did not retract that portion of their notice dealing with the resolution of disputes-- Article VI. The unions' January 17 proposal would have the same result as their original notice of March 25--the prohibition of subcontracting-- but it differed in some respects from the original notice: First, it applied not only to the work within the classification of work rules-- the only work covered in the March 25 notice--but also to long lists of work identified in the proposal as not limited by the rules and, in addition, to "work brought about by changes or modernization in equipment or methods in operation" Second, rather than phrasing the veto power in terms of a requirement that the unions agree to any subcontracting, the proposal precluded subcontracting "unless and until" the Burlington met "all of the conditions" in the agreement. I would like to emphasize some of those conditions as stated in the proposal:

"(c) The carrier shall be required to maintain an apprenticeship program with a ratio of not less than one apprentice for each five mechanics in each respective craft.

(d) The carrier shall be required to re-call all furloughed employees in order to perform the work outlined in this agreement.

(e) The carrier shall be required to work employees on an overtime basis and/or establish second and third shifts in order to perform the work outlined in this agreement.

(f) The carrier shall be required to fill the vacancies created through attrition, and will expand their forces to perform the work in this agreement.

(g) Carrier shall be required to expand their facilities and/or upgrade their equipment to perform the work covered by this agreement."

22. The effect of the above-quoted conditions would be to remove almost any possibility that Burlington could contract out any work, whether it was work within the classification of work rules or within the scope of the proposed agreement. Let me give some examples. If Burlington wanted to subcontract because it simply had no adequate facilities or equipment to permit its employees to perform the

work, the unions' answer under the proposed agreement would be simple--expand the facilities and provide the equipment. Of course, the question of cost to the carrier, a criterion under the existing agreement, is eliminated from the proposed agreement. If the subcontracting was thought necessary by management because its existing work force was inadequate to handle the work, the unions' answer again would be simple--recall all furloughed employees. And if there were none, put on a second shift. And if there were two shifts operating, put on a third. In short, the unions could block any subcontracting transaction unless Burlington was willing to revamp its operations on a wholesale basis. To be sure, the Special Board procedures--as modified by the union's March 25 notice--would be available, and Burlington might assume that at least some of the most preposterous demands of the unions would ultimately be rejected, but the proposal--like the March 25 notice--would not permit Burlington to go ahead with any disputed transaction until after the dispute procedures were concluded. Thus, except in instances where time was of no consequence, the union could effectively prohibit the transactions merely by contesting them.

23. As to condition (c) of the unions' January 17 proposal, I am not certain what possible relationship the apprentice-mechanic ratio bears to the issue of subcontracting, but the Burlington would be precluded from contracting out any work if it failed to maintain that ratio. More significantly, however, the matter was wholly beyond the bounds of anything in the original notice and had not been discussed at all in any of the conferences or mediation sessions. Thus, the unions at almost the last stage of the procedures provided by the Railway Labor Act introduced a new issue into this dispute which they now seem to contend they can force upon the Burlington by the use of a strike. That issue, an apprentice training program, is the subject of an entirely separate dispute between the parties under a separate section 6 notice served upon Burlington on October 19, 1968, that is now in the stage of conferences between the parties under the Railway Labor Act's procedures.

24. While we were dismayed upon receiving the unions' proposal--which was even more restrictive upon the Burlington than their original notices--we nonetheless prepared a suggested agreement which would have amended Article II of the 1964 agreement to impose additional restrictions upon Burlington's right to contract out work, and we delivered that proposal to the mediator for transmittal to the unions shortly before a joint meeting on January 20. At the same time, in light of the indications from the unions' January 17 proposal that they were not only unwilling to limit their original demands but also insistent upon expanding them, Mr. Egbers on January 20 wrote to the union representatives reaffirming our position that the broad demands of the unions were not the subject of mandatory bargaining under the Railway Labor Act and that if the unions insisted upon substantial revisions of the existing national agreement they were required to progress their demands under the same procedure that resulted in that agreement--national handling. Exchanges of correspondence as to procedural problems followed, and the January 20, 21 and 22 meetings made no progress. Mr. Peck of the Electrical Workers did concede, however, when we pointed out that their latest proposal would preclude almost all subcontracting, unit exchange, and purchase of new equipment, that--and I quote from our notes of the meeting of January 20--"he would be willing to say that the Carrier doesn't have to go into the business of manufacturing wire, light bulbs, poles for pole lines, etc."

25. No meetings were held after January 22, and, on January 29, the NMB, pursuant to section 5 First of the Railway Labor Act, wrote the parties urging that the dispute be submitted to arbitration. The defendant Railway Employees' Department, on behalf of all defendants, on January 31 rejected the proffer of arbitration, and the NMB therefore terminated its services by letter of February 4.

26. Subject to the possibility of appointment of a Presidential Emergency Board, the formal procedures of the Railway Labor Act provide no further means for resolving the dispute. My superior, Mr. Egbers, made a further attempt to reach some resolution, however, by requesting a conference with the union representatives on February 27. The parties met, but the unions stated that they were not interested in discussing our January 20 proposal, and the meeting proved fruitless. Finally, Mr. W. J. Quinn, Burlington's President, called Mr. Michael Fox, President of the defendant, Railway Employees' Department, AFL-CIO, on March 3 to urge that the defendants hold further meetings with us in an effort to resolve the dispute. Mr. Fox agreed to further discussions, and the parties met on March 4-8 and again on March 10. The Burlington having made a written proposal on January 20 which would have substantially modified the existing contracting out provisions in favor of the unions, there was some discussion of that proposal but the unions were unwilling to accept it. We then made a proposal to increase the job protection benefits for the employees represented by defendants, making those benefits even more favorable than the broad benefits contained in Article 1 of the 1964 agreement, but, again, the unions would not accept our proposal. On March 8 the unions handed us a written proposal, which I quote in full as follows:

ARTICLE II - SUBCONTRACTING

The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted, ~~except in accordance with the provisions of Sections 1 through 4 of this Article II.~~

Section 1 - Applicable Criteria -

Subcontracting of work, including unit exchange, will be done only when (1) managerial skills are not available on the property; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts.

Section 2 - Advance Notice - Submission of Data - Conference

If the carrier decides ~~that in the light of the criteria specified above~~ it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions. The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the carrier may, notwithstanding, proceed to subcontract the work, and the organization may process the dispute to a conclusion as hereinafter provided.

Section 3 - Request for Information When No Advance Notice Given -

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Section 4 - Machinery for Resolving Disputes -

Any dispute over the application of this rule shall be handled as hereinafter provided.

That proposal, as can be seen by comparing it with Article II of the 1964 agreement (Exhibit A to the complaint), merely struck out the portions of the 1964 agreement that permitted the Burlington and the other carrier parties to contract out work under the criteria defined therein. The effect of the unions' March 8 proposal is apparent on its face, in that it prohibits all contracting out, striking out the exceptions in the 1964 agreement. We told the unions when we had read the proposal that it appeared to be the same as their original notice, and they did not dispute our interpretation. They also made clear that the proposal did not dispose of their notice insofar as that notice sought to amend Article VI of the 1964 agreement, but that they would discuss that later.

27. At the close of our meeting on Monday, March 10, another meeting was scheduled for Tuesday, March 11. The unions advised on that

day, however, that they were working on a new proposal, that would not be available on Tuesday, but that they would meet with us later. When we received no word from them today, Mr. Egbers and I made several calls and learned that the General Chairman had left Chicago. Mr. Egbers then spoke to E. J. Hayes, President of System Federation No. 95, and Mr. Hayes stated that he understood there would be no further meetings.

28. At this point, the Burlington appears to be faced with the equally undesirable alternatives of accepting the unions' demands that we relinquish virtually all rights to determine whether work should be performed by anyone other than the shop employees or face a strike. The second alternative is, in my opinion and based upon the information that we have been able to obtain, a very real and immediate threat. Sometime in the last two or three weeks a notice was posted on the employees' bulletin board at our Clyde Diesel Shop which advised the members of the machinists, electricians, sheetmetal workers and carmen's crafts that they would be able to strike 30 days after February 5 and that "WE EXPECT ONE HUNDRED PARTICIPATION AS WE HAD DURING OUR LAST WALKOUT." I am attaching a copy of that notice as Appendix F to this affidavit. Further, I am attaching as Appendix G a copy of a letter dated February 16, 1969, addressed to all local chairmen of the carmen's union by the General Chairman advising them that the General Chairmen of all of the defendant shop unions had unanimously agreed to seek authority from their international officers to strike the Burlington. The letter also states that their "plans call for a quick withdrawal from service without the Carrier being aware in advance so that they might attempt to block it through a third party interference." Also attached as Appendix C is a copy of a letter dated March 8, 1968 from the Carmen's General Chairman to the local chairman. A copy of the March 8

letter was obtained by my colleague, Mr. Dawson, late this afternoon and was dictated over the telephone. I then read the attached copy to Mr. Dawson over the telephone to assure that it was an accurate copy. That letter states, among other things, that the members are to be prepared to act "on an hours' notice, and that hour could possibly be in the very near future." (Emphasis in original) In light of the above information and the fact that the defendants' General Chairmen broke off conferences without informing us that they did not intend to hold further conferences, I believe it highly likely that the defendants' plan to strike the Burlington at any moment and without notice.

29. The consequences to the Burlington of a strike by defendants are apparent from paragraph 2 of the complaint, which I have verified. Burlington is one of the largest railroads in the nation, and a strike resulting in substantial interference with or cessation of its transportation operations would not only result in daily losses in railway operating revenues in excess of \$750,000 but would also disrupt service to shippers (including military installations), passengers, and the public in general in the twelve states in which it operates.

B. G. Upton

District of Columbia) SS

Subscribed and sworn to before me
this 4th day of March, 1969.

Notary Public

National Agreement of September
20, 1919

Current Burlington Agreement

MACHINISTS' SPECIAL RULES.

RULE 61. Any man who has served an apprenticeship or has had four years' experience at the machinists' trade and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing, or adjusting the metal parts of any machine or locomotive whatsoever shall constitute a machinist.

RULE 62. Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting, and other shop machinery; ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel, and tire turning and boring; engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting, and breaking of all joints on super-

MACHINISTS' SPECIAL RULES QUALIFICATIONS

Rule 44. Any man who has served an apprenticeship or has had four (4) years' experience at the machinists' trade and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing or adjusting the metal parts of any machine or locomotive, shall constitute a machinist.

NOTE: See Appendix, Pages 53-61.

CLASSIFICATION OF WORK

Rule 45. Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power) pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle wheel and tire turning and boring, engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work.

NOTE: See Appendix Page 55.

BLACKSMITHS' SPECIAL RULES.

RULE 110. Any man who has served an apprenticeship or who has had four years' varied experience at the blacksmiths' trade shall be considered a blacksmith. He must be able to take a piece of work pertaining to his class and, with or without the aid of drawings, bring it to a successful completion within a reasonable length of time.

RULE 111. Blacksmiths' work shall consist of welding, forging, heating, shaping, and bending of metal; tool dressing and tempering, spring making, tempering and repairing, potashing, case and bicloride hardening; flue welding under blacksmith foreman; operating furnaces, bull-dozer, forging machines, drop-forging machines, bolt machines, and Bradley hammers; hammer-smiths, drop hammermen, trimmers, rolling mill operators; operating punches and shears doing shaping and forming in connection with blacksmiths' work; oxyacetylene, thermit, and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work.

BLACKSMITHS' SPECIAL RULES QUALIFICATIONS

Rule 55. Any man who has served an apprenticeship or who has had four (4) years' experience at the blacksmiths' trade shall be considered a blacksmith. He must be able to take a piece of work pertaining to his class and, with or without the aid of drawings, bring it to a successful completion within a reasonable length of time.

NOTE: See Appendix, Pages 58-61.

CLASSIFICATION OF WORK

Rule 57. Blacksmiths' work shall consist of forging, welding, heating, shaping and bending of metal; tool dressing and tempering, spring making, tempering and repairing, potashing, case and bicloride hardening; flue welding under blacksmith foreman; operating furnaces, bull-dozer, forging machines, drop-forging machines, bolt machines, and Bradley hammers; welding or building up of frogs, switch points, cross overs, puzzle switches and low rail joints when done in Maintenance of Equipment shops, hammer-smith, drop-hammermen, trimmers, rolling mill operators; operating punches and shears doing shaping and forming in connection with blacksmiths' work, oxy-acetylene, thermit and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work.

National Agreement of September
20, 1919

ELECTRICAL WORKERS' SPECIAL RULES.

Rule 139. Any man who has served an apprenticeship or who has had four years' practical experience in electrical work and is competent to execute same to a successful conclusion will be rated as an electrical worker. Qualifications.

An electrician will not necessarily be an armature winder.

Rule 140. Electricians' work shall consist of repairing, rebuilding, installing, inspecting, and maintaining the electric wiring of generators, switchboards, motors and control, rheostats and control, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, and axle-lighting equipment; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators. Inside wiring in shops and on steam and electric locomotives, passenger train and motor cars; include cable splicers, wiremen, armature winders, electric crane operators for cranes of 10-ton capacity or over, and all other work properly recognized as electricians' work. Classification of electricians.

SHEET METAL WORKERS' SPECIAL RULES.

Rule 125. Any man who has served an apprenticeship, or has had four or more years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper, and capable of bending, fitting, and brazing of pipe, shall constitute a sheet metal worker. Qualifications.

Rule 126. Sheet metal workers shall include tanners, coppersmiths and pipe fitters employed in shop yards and buildings and on passenger coaches and engines of all kinds, skilled in the building, erecting, assembling, installing, dismantling, and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter (present practice between sheet metal workers and boiler makers on railroads to continue relative to gauge of iron), including brazing, soldering, tinning, leading, and babbitting; the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, and steam pipes; the operation of babbitt

fires and pipe-threading machines; oxy-acetylene, thermit, and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work.

Current Burlington Agreement

ELECTRICAL WORKERS' SPECIAL RULES QUALIFICATIONS

Rule 69. (a) Any man who has served an apprenticeship or who has had four (4) years' practical experience in electrical work and is competent to execute same to a successful conclusion within a reasonable time shall constitute an electrical worker.

NOTE: See Appendix, Pages 58-61.

(b) An electrician will not necessarily be an armature winder.

CLASSIFICATION OF WORK

Rule 70. (c) Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights, and headlight generators, electric welding machines, storage batteries, axle lighting equipment, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors and trucks. Operators of electric cranes of 10-ton capacity and over and all other work generally recognized as electricians' work.

SHEET METAL WORKERS' SPECIAL RULES QUALIFICATIONS

Rule 61. Any man who has served an apprenticeship, or has had four (4) or more years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper, with or without the aid of drawings, and capable of bending, fitting and brazing of pipe, shall constitute a sheet metal worker.

NOTE: See Appendix, Pages 58-61.

CLASSIFICATION OF WORK

Rule 62. Sheet metal workers' work shall consist of tinning, copper-smithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading, and babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbitt fires; oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work.

National Agreement of September
20, 1919

BOILERMAKERS' SPECIAL RULES.

RULE 78. Any man who has served an apprenticeship, or has had four years' experience at the trade, who can with the aid of tools, with or without drawings, and is competent to either lay out, build or repair boilers, tanks, and details thereof, and complete same in a mechanical manner shall constitute a boilermaker.

RULE 79. Boilermakers' work shall consist of laying out, cutting apart, building, or repairing boilers, tanks, and drums; inspecting, patching, riveting, chipping, calking, flanging, and flue work; building, repairing, removing, and applying steel cabs and running boards; laying out and fitting up any sheet iron or sheet steel work made of 16-gauge or heavier (present practice between boilermakers and sheet-metal workers on railroads to continue relative to gauge of iron), including fronts and doors; grates and grate rigging, ash pans, front end netting and diaphragm work; engine tender steel underframe and steel tender truck frames, except where other mechanics perform this work; removing and applying all staybolts, radials, flex-

ible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks, and drums; applying and removing arch pipes; operating punches and shears for shaping and forming, pneumatic staybolt breakers, air rams, and hammers; bull, jam, and yoke riveters; boilermakers' work in connection with the building and repairing of steam shovels, derricks, booms, housing, circles, and coal buggies; I-beam, channel iron, angle iron, and tee iron work; all drilling, cutting, and tapping, and operating rolls in connection with boilermakers' work; oxy-acetylene, thermit, and electric welding on work generally recognized as boilermakers' work, and all other work generally recognized as boilermakers' work. It is understood that present practice in the performance of work between boilermakers and carmen will continue.

Current Burlington Agreement

BOILERMAKERS' SPECIAL RULES QUALIFICATION

Rule 49. Any man who has served an apprenticeship, or has had four (4) years' experience at the trade, who can with the aid of tools, with or without drawings, and is competent to either lay out, build or repair boilers, tanks and details thereof, and complete same in a mechanical manner shall constitute a boilermaker.

NOTE: See Appendix, Pages 55-61.

CLASSIFICATION OF WORK

Rule 50. Boilermakers' work shall consist of laying out, cutting apart, building or repairing boilers, car tanks and drums, inspecting, patching, riveting, chipping, caulking, flanging and all flue work; building, repairing, removing and applying steel cabs and running boards, metal headlight boards, wind sheets, engine tender tanks, steel tender frames (except such parts of steel tender frames as are necessary to be brought to car shops for repairs), pressed steel tender truck frames, building and repairing metal pilots, the removing and applying of metal pilots to metal pilot beams; the laying out and fitting up any sheet-iron or sheet-steel work made of 16 gauge or heavier, including fronts and doors, grates and grate rigging, ash pans, front end netting and diaphragm work, removing

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and applying all stay bolts, radials, flexible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks and drums; applying and removing arch tubes, operating punches and shears for shaping and forming, pneumatic stay-bolt breakers, air rams and hammers; bull, jam and yoke riveters; boilermakers' work in connection with the building and repairing of steam shovels, derricks, booms, housing, circles, and coal buggies, I-beam, channel iron, angle iron, and T-iron work, all drilling, cutting and tapping and operating rolls in connection with boilermakers' work; oxy-acetylene, thermit and electric welding on work generally recognized as boilermakers' work, and all other work generally recognized as boilermakers' work.

APPENDIX A

National Agreement of September
20, 1919

CARMEN'S SPECIAL RULES.

RULE 153. Any man who has served an apprenticeship or who has had four years' practical experience at car work, and who with the aid of tools, with or without drawings, can lay out, build, or perform the work of his craft or occupation in a mechanical manner, shall constitute a carman. Qualification.

RULE 154. Carman's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making, and all other carpenter work in shop and yards; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and head light boards, tender frames and trucks; pipe and inspection work in connection with air-brake equipment on freight cars; applying patented metal roofing; repairing steam heat hose for locomotives and cars; operating punches and shears doing shaping and forming, hand forges, and heating torches in connection with carmen's work; painting, varnishing, sur-

facing, lettering, decorating, cutting of stencils, and removing paint; all other work generally recognized as painters' work under the supervision of the locomotive and car departments; joint car inspectors, car inspectors, safety appliance and train car repairers, wrecking derrick engineers, and wheel record keepers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work, and all other work generally recognized as carmen's work.

It is understood that present practice in the performance of work between the carmen and boilermakers will continue.

Current Burlington Agreement

CARMEN'S SPECIAL RULES QUALIFICATIONS

Rule 74. Any man who has served an apprenticeship or who has had four (4) years' practical experience at carmen's work, and who with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner, shall constitute a carman.

NOTE: See Appendix, Pages 58-61.

CLASSIFICATION OF WORK

Rule 75. Carman's work shall consist of building, maintaining, dismantling (except all-wood freight train cabs) painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing and removing and applying wooden locomotive cabs, pilots, pilot beams, running board, foot and head-light boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars, applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats);

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all other work generally recognized as painter's work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairs, oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

NOTE: See Appendix, 1.

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER NO. 11147 DATED
MARCH 17, 1961, PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED

To Investigate Certain Disputes Between the Carriers Represented by the National Railway Labor Conference and Certain of Their Employees Represented by the Railway Employees' Department, AFL-CIO.

NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N. W.

WASHINGTON, D. C. 20005

MASTER COPY NOT REMOVE

WASHINGTON, D.C.
AUGUST 7, 1961

(National Mediation Board Case No. A-7030)

Emergency Board No. 160

LETTER OF TRANSMITTAL

AUGUST 7, 1963.

THE PRESIDENT

The White House, Washington, D.C.

MR. PRESIDENT: The Emergency Board created by you on March 17, 1964, by Executive Order 11147, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate disputes between the carriers represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and certain of their employees represented by the International Brotherhood of Boiler Makers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood of Railway Carmen of America; International Association of Machinists; Sheet Metal Workers' International Association; International Brotherhood of Firemen, Oilers, Helpers, Round House and Railway Shop Laborers functioning through the Railway Employees' Department, AFL-CIO, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

JEAN T. McKELVEY, *Member.*

ARTHUR M. ROSS, *Member.*

SAUL WALLIN, *Chairman.*

(11)

INTRODUCTION

Emergency Board No. 160 was created by Executive Order No. 11147 of the President on March 17, 1964, pursuant to Section 10 of the Railway Labor Act, as amended. The President directed the Board to investigate certain disputes between the carriers represented by the National Railway Labor Conference (comprised of the Eastern, Western and Southeastern Carriers' Conference Committees), and certain of their employees represented by six shopcraft unions operating through the Railway Employees' Department, AFL-CIO, and to report its findings to the President with respect to these disputes within 30 days from the date of the order.¹

In due course, the President appointed as members of the Emergency Board: Saul Wallen of Boston, Massachusetts, Chairman; Arthur M. Ross of Berkeley, California; and Mrs. Jean T. McKelvey of Rochester, New York. The Board convened in Washington, D.C., on March 31, 1964, to hear the opening statements of the parties and to discuss procedures.² It met informally with the representatives of both parties in Washington, D.C., in April 1964, for a further discussion of procedure. Hearings began on May 4, 1964, in Chicago and continued through May 8, 1964. They were resumed on May 9, 1964, in Washington, D.C., and continued through May 22, 1964. The Board held private meetings with the parties from June 16 through 18, 1964, in Boston, Massachusetts; from June 30 through July 3, 1964, and from July 6 through July 13, 1964, in Chicago, Illinois. Subsequently, the Chairman engaged in further mediatory efforts with the parties in Chicago on July 22 and 23 and from July 28 through August 5, 1964. While these sessions did not produce a formal agreement, they did contribute to a significant narrowing of the areas of dispute. Upon successive stipulations of the parties, the President granted three extensions of the time within which the Board was required to file its report, the last such date being August 17, 1964.

¹ The text of the Executive Order, together with a list of the carriers involved in this proceeding, can be found in Appendix A. The six labor organizations involved are the International Brotherhood of Rollermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood of Railway Carmen of America; International Brotherhood of Electrical Workers; International Association of Machinists; Sheet Metal Workers International Association; and International Brotherhood of Firemen, Oilers, Helpers, Round House and Railway Shop Laborers.

² Appearances for the organizations and the carriers are listed in Appendix B.

A more extensive analysis of the Board's procedures, together with its suggestions for their improvement follows.

II. BOARD PROCEDURES

Section 10 of the Railway Labor Act charges emergency boards with the duty to "investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation." This Board created by the President on March 27, 1964, was appointed on March 27 and met with the parties on March 31, 1964, to receive their opening statements and consider the procedures to be followed in its investigation.

When the Board asked the parties to estimate the amount of time they expected to consume in the presentation of their cases, it was informed that a total of about forty-two to four days of hearing would be required. While the Act does not specify the manner in which the Board is to carry out its investigation, the parties have long shown a preference for lengthy, rather formal hearings of a quasi-judicial nature in which both witnesses read their testimony and in which mountains of evidence containing facts, some of current value and some of historic significance only, are filed. Prior Emergency Boards have for the most part accepted this pattern of procedure.

We believe, however, that these procedures deviate from the intent of the framers of the Railway Labor Act. The provision for a report in thirty days must have been made in contemplation of a flexible procedure suited to the problems of each case in which all suitable means of information gathering would be employed, including written statements of the facts, informal discussions with the parties, together and separately, and direct and cross-examination of witnesses where necessary or appropriate. The framers of the Act could not have intended that disputes be heard and reports be written in thirty days from the date of a Board's creation without conferring on the Board the discretionary power to determine the quantum of evidence it requires and the necessary means for obtaining it.

In an attempt to reduce the long delays that have become a feature of dispute-resolution under the Act, the Board informally advised the parties in this case that it contemplated requiring the submission of the parties' direct and rebuttal cases in the form of documents and exhibits, after which it proposed to take testimony on those areas in which a factual controversy was thus revealed and to hear summary argument on the disputed issues. However, the parties, long accustomed to their own way of procedure, objected in part on the ground that they had previously filed cases in contemplation of the full hearing type of procedure. For this reason the Board issued the following procedural ruling:

"Emergency Board No. 160 enters into the record the following ruling on the procedure to be observed in the hearing of the dispute between the parties:

1. Each party is to be limited to a total of seven days to present its case in chief and its rebuttal evidence or testimony.
2. Each party is to be limited to a total of one day for presentation of oral argument.
3. The time consumed in cross examination shall be charged to the party doing the cross-examining.
4. Written briefs may be filed at the option of the parties.
5. In order to permit the most efficient utilization of the allowed time, the Board encourages the parties to submit background or other non-controversial evidence in exhibit form.
6. A day of hearing will be six hours, exclusive of recesses.
7. Hearings will commence at 9:00 A.M.
8. Hearings will commence on May 4, 1964, in Chicago, Illinois, at a place to be determined. The Organizations' case in chief will be presented during the course of these hearings in Chicago. Thereafter the Carriers' case in chief will be presented in Washington, D.C., at a place to be determined.

Per order of Emergency Board 160 by Saul Waller, Chairman."

Even this expedited procedure, however, permitted the presentation of a considerable amount of extraneous material only remotely related to the issues. The fact is that while some of the documents introduced as exhibits and the testimony of some of the witnesses were valuable in enabling us to grasp the issues, our mediation sessions with the parties constituted a more economical and efficient method for developing the facts concerning, and the implications of, the issues in the case.

It is our hope that future emergency boards will take the initiative in developing procedures suitable to the particular case and will reinstate the flexibility that is inherent in Section 10 of the Act in carrying out their investigatory function. We believe that disputes will be settled more expeditiously and more economically if this is done.

PARTIES TO THE DISPUTE

The six unions involved in this proceeding represent the majority of the approximately 150,000 shopworkers employed by Class I Railways in 1962. They are classified into 22 I.C.C. Reporting Divisions of which 13 classes are shopcraft employees and 7 classes consist of stationary engine and boiler room employees and shop and roundhouse laborers. These shopcrafts comprise about one-third of

all nonoperating employees and about one-fifth of all employees of Class I Line-Haul Railways.

The carriers who are parties to this proceeding are 147 line-haul railroads and terminal and switching companies, the great majority of which are Class I carriers, that is railroads whose gross annual earnings exceed \$5,000,000. Among the major Class I carriers which are not a party to this proceeding are the Pennsylvania, the South-
ern, and the Florida East Coast Railways.

HISTORY OF THE DISPUTE

This dispute began on October 16, 1962, when the six shopcraft organizations served notices on individual carriers pursuant to Section 6 of the Railway Labor Act, as amended, seeking certain rules changes in existing agreements designed to promote stabilization of employment, to protect employees against contracting out practices of the carriers, and to protect the work of each craft or class represented by the organizations.¹ Subsequently, in October and November 1962, various counterproposals were served by individual carriers, on the organizations.² Many of the carriers involved later notified the organizations that they had authorized Regional Carriers' Conference Committees to handle this dispute to a conclusion in national conferences under the Railway Labor Act. Similarly an Employees' Conference Committee, consisting of the President and Executive Council Members of the Railway Employees' Department, AFL-CIO, was authorized by the organizations to handle the dispute nationally.

Because of the failure of the carriers to respond to the organizations' request that a date be set for national negotiations to commence, the Railway Employees' Department invoked the services of the National Mediation Board on June 28, 1963.

On August 26, 1962, more than ten months after the service of the organizations' Section 6 notices, the parties began national negotiations in Washington. After approximately 14 meetings in which no progress was made, mediation sessions began on October 22, 1963, only to be recessed on November 1, 1963. Some further mediation was attempted in the next two months, but without success. On January 30, 1964, the National Mediation Board proffered arbitration in accordance with the procedures of the Railway Labor Act. The organizations accepted arbitration on condition that the carriers' counterproposals be withdrawn. Since this condition proved unacceptable to the carriers, the National Mediation Board notified the parties on February 20, 1964, that mediation efforts were terminated. Subsequently,

¹ See Appendix C for the text of a typical section 6 notice.
² See Appendix D for the text of a typical counterproposal.

as a result of a strike authorization, the National Mediation Board certified the dispute to the President who issued the Executive Order establishing this Emergency Board.

BACKGROUND OF THE DISPUTE

This dispute has its origin in the sweeping technological and organizational changes which have adversely affected the employment of all railroad workers in the last twenty years. The nation is just beginning to recover from the bitter and protracted dispute between the carriers and the operating brotherhoods over the manning of diesel-powered engines and trains. While the thrust of technological change has been felt by all classes of railroad workers, its impact on shopcraft employment has been the most shattering. Whereas average shopcraft employment was 367,486 in 1945, it had dropped to 149,151 in 1962. In other words, some 218,335 shopcraft positions had been abolished between 1945 and 1962, a drop of approximately 60 percent in employment. The corresponding percentage decline in employment for all nonoperating employees in the same period was 57 percent and for all operating employees 37 percent. The following table sets forth these comparisons in more detail:

TABLE I.—Average employment (middle of month count)

Year	Shopcraft employees	All non-operating employees	Operating employees	All railway classes
1945.....	367,486	1,013,646	314,945	1,420,203
1955.....	256,956	722,099	249,737	1,058,216
1961.....	152,012	447,767	199,135	717,543
1962.....	149,151	432,195	195,692	700,146
Decrease: 1945 to 1962.....	218,335	581,745	116,256	720,120
Percentage decrease: 1945 to 1962.....	59.4%	57.4%	36.9%	50.7%

If one examines the changes in shopcraft employment only since the completion of dieselization, that is, in the period from 1955 to 1962, the same two trends stand out: (1) The steady erosion of shopcraft employment from 256,956 in 1955 to 149,151 in 1962, a drop of over 100,000 jobs which is a 42 percent decline in employment; and (2) the greater relative decline in shopcraft employment as compared with the decline in operating employment, in all nonoperating employment, and in all railroad employment. Tables II and III show these comparisons in detail:

TABLE II.—Change in employment, shopcraft classes operating and nonoperating railway classes,* Class I line-haul railways, 1935-62

Year	Shopcraft employees (number)	Operating employees (number)	Nonoperating employees (number)
1935.....	256, 086	249, 737	722, 609
1936.....	249, 712	250, 535	700, 712
1937.....	231, 119	247, 274	655, 097
1938.....	182, 008	219, 116	543, 730
1939.....	181, 231	216, 552	522, 264
1940.....	171, 195	211, 604	494, 773
1941.....	152, 012	199, 135	447, 767
1942.....	149, 151	195, 092	432, 198
Percentage change: 1935-62.....	-42. 0%	-20. 4%	-40. 2%

* Nine-month count.

Source: Interstate Commerce Commission, Statement M-500.

TABLE III.—Change in employment, shopcraft classes and all railway employees,* Class I line-haul railways, 1935-62

Year	Shopcraft employees (number)	All railway employees (number)
1935.....	256, 086	1, 038, 216
1936.....	249, 712	1, 022, 604
1937.....	231, 119	989, 601
1938.....	182, 008	840, 575
1939.....	181, 231	815, 474
1940.....	171, 195	780, 494
1941.....	152, 012	717, 543
1942.....	149, 151	700, 146
Percentage change:		
1935-62.....	-42. 0%	-33. 8%

* Nine-month count.

Source: Interstate Commerce Commission, Statement M-500.

Within the shopcraft occupation all classes of shopcraft employees have lost jobs, although some occupations have been affected more severely than others. Table IV shows the decline in the number of jobs by crafts between 1935 and 1962:

TABLE IV

Craft or class	Loss of positions, 1935-62	Percentage decline in employment, 1935-62
Machinists.....	9, 600	28. 8
Boilermakers.....	2, 600	43. 1
Blacksmiths.....	1, 600	41. 7
Sheet metal workers.....	2, 800	20. 0
Electrical workers.....	3, 000	18. 4
Freight carmen.....	18, 000	30. 5
Passenger carmen.....	6, 000	33. 0
Cash cleaners.....	4, 700	42. 8
Firemen and others.....	23, 000	50. 7
Apprentices.....	4, 500	58. 6
Skilled trades helpers.....	31, 600	67. 4

These severe declines in employment thus provided the impetus for the Section 6 notices served by the shopcrafts on October 15, 1962, which bear the general label of "1962 Job Security and Employee Protection Movement." In the unions' view much of the decline in employment is attributable to technological and organizational change, to subcontracting of work formerly done by shopcraft employees, and to improper assignments of shopcraft work to supervisors and in one instance, that of the Carmen, to operating crews. While the Section 6 notices, as originally framed, sought to limit or arrest the pace of technological and organizational change by giving the unions what the carriers termed a "veto" power over management decisions, it became apparent early in the hearings that the unions were really seeking to cushion the shock of technological change by providing displaced employees with some form of income or job protection. In addition, the organizations were asking that they be given notice to enable them to be consulted before changes which might affect their members adversely were put into effect, as well as the opportunity to test the reasonableness of the carriers' actions under criteria to be recommended by this Board and negotiated by the parties.

In the Board's view much time was wasted during the formal presentation of the case since the carriers addressed themselves to the original Section 6 notices rather than to the revised statements of demands made during the course of the hearings. It would therefore be equally futile and unrealistic for this Board to base its report and recommendations on the literal text of the original notices rather than

to deal with the issues as they emerged during the hearings, and more significantly, during the informal mediation sessions. In other words, the Board will analyze the demands of the organizations in their present posture, rather than in their historic context, recognizing nonetheless that it is not free in its recommendations to expand the scope of the original demands.

Just as the unions sought in their original proposals to arrest the pace of technological change in an effort to protect their members from job losses, so the carriers in framing their counterproposals urged the need for complete freedom from restrictive work rules which in their view impeded their right to manage and to allocate their work forces efficiently. Consequently, while the Board is well aware that this case poses sharply the conflict of interest between the carriers' need for efficiency and the unions' need for security, it proposes to make its recommendations on the basis of its understanding of the true positions of the parties.

JOB PROTECTION

The shopcrafts' proposal on job protection is

"The same protective benefits as those afforded by Sections 4, 6, 7, 8, 9, 10 and 11 of the Agreement of May, 1936, Washington, D.C., shall be applicable with respect to employees who are displaced or deprived of employment as a result of changes in the operations of this individual carrier such as:

- (1) Transfers of work;
- (2) Abandonments, discontinuances or consolidations of facilities or services, or portions thereof;
- (3) Contracting out of work;
- (4) Leases or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;
- (5) Voluntary or involuntary discontinuance of contracts;
- (6) Technological changes;
- (7) Installation of labor saving equipment and machinery;
- (8) Trade in and replacement of equipment or unit exchange;
- (9) Any changes in work assignments or operations other than those resulting solely from decline in volume of traffic."

The principle of job protection in the railroad industry is not new. Since the Washington Job Protection Agreement was consummated in 1936 railroad employees have been protected from the adverse effects on their job opportunities and living arrangements arising from mergers, consolidations or abandonments. The shopcrafts now seek

similar protective provisions for those disemployed, dislocated or downgraded as a result of technological, organizational or related changes introduced by management on single railroads.

There is in force on the railroads a growing number of job protection agreements applicable to job abolitions or displacements, technological or organizational changes. The subject has come to the fore by the Clerks and the Telegraphers organizations have negotiated, either directly or after emergency board recommendations, a significant number of such agreements.

The shop crafts have arrived late on this scene. The greatest decline in their numbers has long since taken place. The prospect is for quite stable, if not rising employment, in their ranks. Nonetheless, a job protection agreement for them is in order. If it does not actually have to be applied, so much the better. That will be cheaper for the Carriers while the men will have the peace of mind that any insurance policy affords.

Job protection is favored generally by public policy. Public opinion is sensitive to the need for gearing the pace of disemployment stemming from automation and generally rising managerial efficiency to the rate of growth of the economy as a whole. In recent years the former cutstripped the latter and public policy has increasingly favored arrangements to cushion the impact. The results can be seen in the growing number of stabilization, technological displacement and job protection agreements in outside industry.

The carriers stated that they "do not oppose transitional benefits for employees effected by carrier initiated operating changes providing (1) the carriers are free to introduce such changes without union obstruction; and (2) the changes represent increased efficiency or economy of operations rather than adjustments necessitated by declines in business." The carriers see the Unions' proposals as "part of a broad program to protect jobs, not individuals" and "as a medium for impeding or thwarting the carriers' efforts to adapt to changing conditions."

The evidence for these conclusions, at least in the case of the shop crafts, is scanty. In the first place, up to now there have been serious declines in employment in the shop crafts since 1933 and many of the positions were abolished as a result of technological or organizational changes introduced by management. It is thus apparent that existing rules or agreements scarcely constituted an impediment to the traditional right of management to modernize by introducing new machines or new ways of organizing work. If this is so, it is difficult to perceive how an employee protection plan would impede this right. We have been shown no cases involving the shop crafts in which organizational or technological changes have been thwarted by existing rules. While existing craft line restrictions may impose some paraly

on efficiency (the magnitude of which is as yet undetermined), this penalty exists in any case and nothing inherent in the terms of the Washington Job Protection Agreement is likely to enhance it.

The carriers' post-hearing brief raises the specter of use by the Unions of a job protection agreement to "strengthen not weaken their voice in decisions to contract out work, transfer work, introduce technological changes and the many other types of decisions listed..." in their proposal. It is not our intention to recommend a job protection plan that would either strengthen or weaken the Unions' voice in such decisions. Rather we have sought to set forth principles which will facilitate, not frustrate, technological or organizational changes of types not clearly barred by existing rules or agreements. In general, our recommendation contemplates an adaptation of the Washington Job Protection Agreement of 1936 to displacements or deprivations of employment arising out of technological or organizational changes but not to displacement or displacements attributable to declines in volume of business. We believe that the rule should specifically recognize the Carrier's right to make such changes if not clearly barred by existing rules or agreements. Our recommendation, if adopted, would create the obligation on the part of an employee whose work is transferred from one location to another to follow the work under pain of forfeiture of the benefits of the job protection plan. However, it is not our intent to require an employee to accept a job in another location when not required by existing seniority rules if that job was not the result of a transfer of work but was the result of a simultaneous but unrelated expansion of employment at the other location. Finally, we shall also recommend that as part of any agreement on job protection, the parties require that the seniority of employees employed at one location due to technological or organizational changes be correlated with the seniority of the employees at the point or in the district to which they move. We believe, and shall recommend, that if in such cases there is disagreement over the method of correlating seniority, the resultant dispute should be settled in an expedited arbitration procedure.

In recommending a job protection formula based largely on the Washington Job Protection Agreement of 1936 in this case, we were influenced by the character of the notice filed on October 15, 1963, by the ship owners. We have no license to go beyond that notice notwithstanding that significant improvements have been made in the job protection area since that time. We need not speculate on whether, under other circumstances, our recommendation would be different. We mention this point only to underline that we did not decide on the recommendation here because it represented the last word on the subject.

RECOMMENDATION ON JOB PROTECTION

We recommend:

1. That the parties agree that the Carrier has and may exercise the right to introduce technological and operational changes existing in such changes are clearly barred by existing rules or agreements.
2. That the parties agree to extend the provisions of the Washington Job Protection Agreement of 1936 to employees who are deprived of employment or placed in a worse position with respect to their compensation and rules governing working conditions by transfer of work, abandonment, discontinuance or consolidation of facilities or services or portions thereof; contracting out of work; lease or purchase of equipment or component parts thereof; the installation, operation, servicing or repairing of which is to be performed by the lessor or seller; voluntary or involuntary discontinuance of contracts; technological changes; trade-in or repurchase of equipment or unit exchange.
3. However, that an employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements, the layoff of temporary employees or a decline in a Carrier's business. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in paragraph 1 hereof or whether it is due to the causes listed in paragraph 2 hereof, the burden of proof shall be on the Carrier.
4. That the parties agree on a 90 day notice to the General Chairman of the organization affected by the abolition of jobs because of one of the reasons set forth in Paragraph 1 hereof. The notice shall be in the nature of a full disclosure of all facts and circumstances bearing on the discontinuance of the position. Provision shall be made for a conference prior to the close of the 90 day period between the General Chairman or his representative, at his option, with a representative of the Carrier to discuss the manner in which and the extent to which employees represented by the organization may be affected by the changes involved.
5. That the parties agree to grant employees continued in service but who are placed, as a result of the conditions set forth in paragraph 1 above, in a worse position with respect to compensation and rules

governing working conditions, the benefits set forth in Section 6 (a), (b) and (c) of the Washington Job Protection Agreement of 1936.

6. That the parties agree to grant employees deprived of employment as a result of the conditions set forth in paragraph 1 above a monthly dismissal allowance in accordance with the terms and conditions set forth in Section 7 (a) through (j) of the Washington Job Protection Agreement.

7. That the parties agree that an employee eligible to receive a monthly dismissal allowance may, at the time he becomes eligible, opt for a lump sum separation allowance in accordance with the terms and conditions set forth in Section 9 of the Washington Job Protection Agreement.

8. That the parties agree on the same protections of fringe benefits as are set forth in Section 5 of the Washington Job Protection Agreement.

9. That the parties agree on the same relocation benefits for employees retained in the service as are set forth in Section 10 of the Washington Job Protection Agreement.

10. That the parties agree on the same provisions governing compensation for real estate losses as are set forth in Section 11 of the Washington Job Protection Agreement.

11. That the parties agree to dovetail the seniority of employees dismissed at one location due to one of the changes referred to in Paragraph 1 above with the seniority of the employees at the point or in the district to which their work was transferred. In the event there is disagreement over the method to be followed in dovetailing seniority, the resultant dispute should be handled in the expedited grievance procedure.

12. That the parties agree that any dispute arising out of the application of this rule (1) as to whether an employee is deprived of employment as a consequence of changes in work assignments or operations resulting from a decline in volume of business; and (2) as to the protective benefits to which he may be entitled, if any, shall be submitted to an expedited arbitration procedure hereinafter set forth.

SUBCONTRACTING

One of the major reasons for the decline in shop craft employment in the past decade, according to the unions, is the practice of many carriers to subcontract building, rebuilding, overhauling and maintenance of equipment to outside manufacturers. In particular the unions complain that, although decisions of the Adjustment Board have established some implied limitations on subcontracting by the carriers, the practice of unit exchanges whereby the carriers trade in

old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts has gone unregulated by the Adjustment Board on the ground that these are property transactions. What the unions are seeking in this proceeding is the establishment of a rule which would require the carriers to perform on their own properties work for which they have the necessary employee skills and shop facilities. To administer such a rule the carriers would require notice of the intent to subcontract work, the notification of criteria for judging the reasonableness of the carrier's action, and provision for ultimate decision by an arbitrator should the unions choose to contest the propriety of the carrier's action.

On the other hand the carriers contended that they needed a free and unrestricted right to engage in all forms of subcontracting without limitation in order to operate efficiently.

From the evidence and testimony submitted this Board is impressed with the great diversity of practices among the various carriers. Some do all or almost all their own building, upgrading and repairing of equipment; others have abandoned or consolidated their shop facilities; while still others have relied on outside industry to perform a major part of their equipment maintenance. Although it is not possible or feasible to recommend that carriers which have scrapped their repair facilities should restore or re-establish them, this Board is of the opinion that the public interest would be served by measures which would help to arrest the decline in railroad shop facilities.

To the extent that subcontracting has played a part in the steady erosion of shop employment it has contributed to the draining away of a skilled labor pool from the railroad industry. The current shortage of railroad freight cars highlights the inability of the industry to meet the nation's needs for transportation, the inability which has aggravated some of our domestic and foreign problems. The national interest would be better served by maintaining the capacity of the railroad industry to keep its equipment in good working order and to expand its operations as needs require.

Moreover, this Board is fully aware that outside industry through contract language and interpretation has accepted certain limitations on its right to engage in various forms of subcontracting ranging from the mere requirement of notice to absolute prohibitions on contracting-out of work.

All these considerations lead us to recommend a rule which is largely procedural but which would represent a modest step forward in preventing some of the abuses which have arisen in the area of subcontracting. While this would provide an opportunity to the unions to be consulted before new forms of subcontracting are under-

taken by a carrier, it would allow the carrier to pursue the goal of efficient operation by letting out contracts subject to possible challenge through the grievance procedure as to the propriety of its action under stipulated criteria.

RECOMMENDATIONS ON SUBCONTRACTING

We recommend the adoption of the following rule:

"The carriers agree that subcontracting of work, including unit exchange, will be done only when (1) managerial skills, skilled manpower or equipment are not available on the property, or (2) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (3) such work cannot be performed by the carriers except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on substandard wages.

"Except for proposed contracts involving minor transactions, if the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. The representative of the organization will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action and will be given a reasonable opportunity for such discussion. This is not to be construed, however, as requiring the consent of the organization to such contracts.

"If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly.

"Any dispute over the application of this rule shall be submitted to the expedited arbitration procedure set forth below."

USE OF SUPERVISORS

The record supported the Union's claim of abuses in the use of supervisors at outlying points to perform not only such nonmechanics' tasks as are required but also to perform work of the crafts. We found little difference of opinion between the parties over the proposition that some corrective action was in order. Our recommendation proposes to lay down a general rule but to delay its application in the case of incumbent supervisors.

RECOMMENDATION

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foreman at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift or 60 hours for all shifts.

If any question arises as to the amount of craft work being performed by supervisory employees, a joint check shall be made at the request of the General Chairman of the organizations affected. Any disputes over the application of this rule may be referred to the expedited arbitration procedure.

The incumbent supervisor who assumed his present position prior to October 15, 1963, at a point where no mechanic is employed, may be retained in his present position. However, his replacements shall be subject to the preceding paragraphs of this rule.

OUTLYING POINTS RULE

This is an issue which at the outset of the case appeared to be in sharp dispute between the parties because the carriers were of the opinion, based on the language of the Section 6 notice, that the organizations sought to exercise a veto power over a carrier's present contractual right unilaterally to designate outlying points, that is those points where existing work requirements did not in the carrier's judgment justify the employment of mechanics of all crafts. It soon became apparent, however, that the unions were merely seeking the right to be consulted, and if necessary, to process a grievance over such a designation. Since this revised proposal seemed reasonable, we are accordingly recommending the adoption of the following rule.

RECOMMENDATION ON OUTLYING POINTS

At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft which may be necessary to have performed. Disputes as to whether or not there is sufficient work to justify employing a mechanic of each craft, and disputes over the designation of the craft to perform the available work shall be handled as follows: The carrier will give the General Chairman of the organizations affected 15 days notice of its proposed designation of an outlying point. A conference is to be held to seek agreement on the proposed designation of

the point and the craft to be retained. The parties may undertake a joint check of the work done at the point. Failing agreement, the carrier may proceed and the dispute shall be handled under the expedited arbitration procedure.

Coupling, Inspection and Testing

This problem arises from the Brotherhood of Railway Carmen which claims entitlement to the work of inspecting and testing of air brakes and appliances on cars and the related work of coupling air, signal and steam hose.

The Carriers reply that such inspections are the duty of all crafts and that the coupling work is a simple operation to be done by whoever is handy.

The Union's rejoinder is that car inspection is at the heart of the Carriers' craft; that the Power Brake Act calls for inspection work which car inspectors are supposed to perform; and that the related coupling is Carriers' work as well.

The origins of the issue are veiled by time and we were compelled to rely greatly on the parties' more intimate knowledge of its history. In our informal talks with the parties we found that their views, while divergent, might meet on the rule set forth below.

RECOMMENDATION

We recommend the adoption of the following rule:

In yards or terminals where carmen are employed and are on duty at or in the immediate vicinity of the departure tracks where road trains are made up, the inspecting and testing of air brakes and appliances of road trains, and the related coupling of air, signal and steam hoses incidental to such inspections, shall be performed by carmen.

This rule shall not apply to coupling of air hose between locomotive and the first car of an outbound train; between the caboose and the last car of an outbound train or between the last car in a "double-over" and the first car standing in the track upon which the outbound train is made up.

EXPEDITED ARBITRATION PROCEDURE

Except for the recommendation on inspection and testing of air brakes, each of the recommendations set forth above provides for the resolution of disputes over their interpretation to an expedited arbitration procedure. During the course of the hearings and in the informal meetings both parties expressed dissatisfaction with the

protracted and cumbersome arbitration procedures available to them under the Railway Labor Act. Consequently this Board is recommending that the parties adopt the following expedited arbitration procedure which shall be applicable to disputes arising out of the interpretation of all but one of the substantive matters involved in this proceeding.

RECOMMENDATION

Disputes subject to the expedited arbitration procedure which are not settled in direct negotiations may be referred to arbitration by either party. Within 10 days after notice from either party that the dispute will be referred to arbitration, the carrier and the organization or organizations in interest shall each name one member, and the two partisan members so chosen, within 10 days after the date of the selection of the second partisan member, shall name the neutral member of the board. If the members chosen by the parties shall fail to name the neutral member of the board within 10 days, the National Mediation Board shall submit five names from a standing panel of arbitrators previously designated for this purpose by the National Mediation Board after consultation with the parties. The parties shall each have the right to strike two names. The Board shall appoint the arbitrator from among the names not struck. If either party fails to name a member of the board within the 10 days specified, the National Mediation Board shall be requested to name such member within 5 days after the receipt of such request.

Decisions of the arbitration board shall be rendered within 30 days after the appointment of the neutral member, unless such time limit is extended by mutual agreement of the parties. A decision of the majority of the board shall be binding upon both parties. The parties shall assume the costs and expenses of their respective members. The costs and expenses of the neutral member and any incidental expenses shall be shared equally by the parties.

CONCLUSION

The foregoing six recommendations are those which the Board believes the parties should adopt to dispose of the issues between them. The Board makes the further recommendation that all other proposals and counterproposals which are not dealt with in this report should be withdrawn.

Respectfully submitted,

JEAN T. McKEEVER, *Member*
ARTHUR M. ROSS, *Member*
SAMUEL WALLEN, *Chairman*

WASHINGTON, D.C., August 7, 1964.

(List A, Eastern Railroads, referred to follows.)

Akron, Canton and Youngstown Railroad Company
 Ann Arbor Railroad Company
 Baltimore and Ohio Railroad Company
 Baltimore and Ohio Chicago Terminal Railroad Company
 Staten Island Rapid Transit Railway Company
 Stroads Creek and Mullberry Railroad
 Baggot and Arcosville Railroad
 Bessemer and Lake Erie Railroad
 Boston and Main Railroad
 Brooklyn Eastern District Terminal
 Buffalo Creek Railroad
 Canadian National Railways
 Lines in the United States
 St. Lawrence Region
 Great Lakes Region
 Canadian Pacific Railway Company
 Central Railroad Company of New Jersey
 New York and Long Branch Railroad Company
 Central Vermont Railway
 Chicago Union Station Company
 Cincinnati Union Terminal Company
 Dayton Union Railway Company
 Delaware and Hudson Railroad Corporation
 Detroit and Toledo Shore Line Railroad Company
 Detroit Terminal Railroad
 Detroit, Toledo and Ironton Railroad Company
 Erie-Lackawanna Railroad Company
 Grand Trunk Western Railroad Company
 Indianapolis Union Railway Company
 Lehigh and Hudson River Railway Company
 Lehigh Valley Railroad
 Maine Central Railroad Company
 Portland Terminal Company
 Monongahela Railway Company
 Montreal Railroad Company
 New York Central System
 New York Central Railroad Company
 New York District
 Grand Central Terminal
 Eastern District
 Boston and Albany Division
 Western District
 Northern District
 Southern District
 Indiana Harbor Belt Railroad Company
 Chicago River and Indiana Railroad Company
 Pittsburgh and Lake Erie Railroad Company
 Lake Erie and Eastern Railroad Company
 Cleveland Union Terminal Company
 New York, Chicago and St. Louis Railroad Company

APPENDIX A

EXECUTIVE ORDER NO. 1117

CONVENE AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE CARRIERS REPRESENTED BY THE NATIONAL RAILWAY LABOR CONFEDERATION AND CERTAIN OF THEIR EMPLOYEES

WHEREAS disputes between the carriers represented by the National Railway Labor Conference, designated in List A attached hereto and made a part hereof, and certain of their employees represented by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood of Railroad Carriers of America; International Brotherhood of Electrical Workers; International Association of Machinists; Sheet Metal Workers' International Association; International Brotherhood of Firemen, Oilers, Helpers, Round House and Railway Shop Laborers functioning through the Railway Employees' Department, AFL-CIO, labor organizations; and

WHEREAS these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and WHEREAS these disputes, in the judgment of the National Mediation Board threaten substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service;

NOW, THEREFORE, by virtue of the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate these disputes. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

The board shall report its findings to the President with respect to the disputes within thirty days from the date of this order.

As provided by Section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the carriers represented by the National Railway Labor Conference, or by their employees, in the conditions out of which the disputes arose.

(S) LINCOLN B. JOHNSON

THE WHITE HOUSE,
 March 17, 1964.

(15)

Kentucky and Indiana Terminal Railway
 Louisville and Nashville Railroad
 Norfolk Southern Railway
 Norfolk and Portsmouth Belt Line Railroad
 Norfolk and Western Railway
 Richmond, Fredericksburg and Potomac Railroad
 Seaboard Air Line Railway

APPENDIX B

APPENDIX B:

Representatives of the Carriers:

National Railway Labor Conference
 J. H. Wolff, Chairman
 Eastern Carriers' Conference Committee
 J. J. Gahnen, Chairman
 Chairman, Labor Relations Committee
 J. H. Pyle, Vice President, Employee Relations
 National Railroad
 New York Central System
 G. W. Knicker, Vice President, Labor Relations
 Pennsylvania Railroad Company
 Western Carriers' Conference Committee
 H. H. Falkmann (Chairman), Chairman
 Committee on Labor Relations
 General Association of Western Railways
 A. D. Hanson, Vice President, Labor Relations
 Union Pacific Railroad
 G. M. Van Patten, Director of Personnel
 Chicago and North Western Railway System
 Southern Railway Carriers' Conference Committee
 C. A. McRae (Chairman), Chairman
 Southeastern Carriers' Conference Committee
 J. H. Day, Jr., Assistant Vice President
 Norfolk & Western Railway
 W. S. Schell, Director of Personnel
 Louisville and Nashville Railroad
 Counsel for the National Railway Labor Conference and the Carriers'
 Conference Committee
 CHARLES L. THOMAS, JR.
 MARTIN M. LEBENWITZ
 HOWARD NORTON
 IRVING M. WEISS
 JAMES M. WOLFE
 APPENDIX B FOR THE UNIONS:
 RAILWAY EMPLOYEES' DEPARTMENT AFL-CIO
 MICHAEL FOX
 GEORGE CECCHI
 INTERNATIONAL ASSOCIATION OF MACHINISTS
 J. W. HANSEN
 ALLEN DUGANLY

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACK-
 SMITHS, FORGERS & HELPERS
 C. E. BACWELL
 F. H. WOLFE
 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
 J. W. O'BRIEN
 W. F. DEXTER
 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
 T. V. HANSEN
 J. T. SOOZ
 BROTHERHOOD OF RAILWAY CARMEN OF AMERICA
 A. J. BENTHARDY
 I. L. BARNEY
 INTERNATIONAL BROTHERHOOD OF FIREMEN & Oilers
 J. B. ZINN
 JOHN CURRAN
 ECONOMIC ADVISORS
 E. L. OLIVER
 W. M. HOKER
 JACK FAYE
 Legal Counsel
 ELSON, LASSERS & WOLFF
 ALLEN ELSON
 WILLARD K. LASSERS
 AARON WOLFF

APPENDIX C

Notwithstanding the provisions of any agreements heretofore made between this carrier and any of the organizations signatory hereto:
 (a) None but mechanics or apprentices regularly employed as such shall do mechanics' work of their craft as per the special rules thereof, and no work of any craft covered by such agreements shall, under any circumstances, be performed by any official, supervisory officer, or by employees who are employed in another craft; except at points where it is agreed that there is not sufficient work to justify employing a mechanic of each craft and agreement is reached between the carrier and the General Chairmen of the crafts involved arriving at special arrangements for the performance of work at such points. Motor vehicles (passenger or truck) used for road service will be driven by an employee of the craft whose work is to be performed. In case of any violation of this rule, the employee or employees who would have performed such work if it had been performed without violation of this rule, shall be compensated on the same basis as if they or he had performed the work.
 (b) Except pursuant to a special agreement as to specifically described work made in each instance between the representative of the

carrier and the General Chairman of the craft involved, all work, which if performed by the carrier with its own employees, would be covered by such agreements, shall be performed by employees covered by such agreements, and the carrier shall not

- (1) Contract with others for the performance of any such work;
- (2) Contract with others for the trade in or repurchase of equipment, unit exchange, the installation, repair, rebuilding or replacement of equipment or the component parts thereof; or
- (3) Lease or purchase equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller.

In case of any violation of this rule, the employee or employees who would have performed such work if it had been performed without violation of this rule, shall be compensated on the same basis as if they or he had performed the work.

- (c) The same protective benefits as those afforded by Sections 4, 6, 7, 8, 9, 10 and 11 of the Agreement of May, 1926, Washington, D.C., shall be applicable with respect to employees who are displaced or deprived of employment as a result of changes in the operations of this individual carrier such as:

- (1) Transfers of work;
- (2) Abandonments, discontinuances or consolidations of facilities or services, or portions thereof;
- (3) Continuing out of work;
- (4) Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;
- (5) Voluntary or involuntary discontinuance of contracts;
- (6) Technological changes;
- (7) Installation of labor saving equipment and machinery;
- (8) Trade in and repurchase of equipment or unit exchange;
- (9) Any changes in work assignments or operations other than those resulting solely from decline in volume of traffic.
- (10) The coupling and uncoupling of air, steam and signal hose, testing air brakes and appliances on trains or cuts of cars in yards and terminals, shall be Carriers' work.
- (e) The foregoing rules shall supersede any provisions of existing agreements not consistent therewith.

APPENDIX D

COUNTERPROPOSALS OF CARRIERS.

1. CLASSIFICATION OF WORK

ARTICLE XXV. A

All agreements, rules, regulations, interpretations and practices, however established, governing the classification of work of mechanics, helpers and apprentices of employees represented by the following organizations:

International Association of Machinists
International Brotherhood of Boilermakers, Iron
Ship Builders, Blacksmiths, Forgers & Helpers
Sheet Metal Workers' International Association
International Brotherhood of Electrical Workers

shall be merged into three classification of work rules. The first rule shall govern the work of all mechanics, the second the work of all helpers, and the third the work of all apprentices. Thereafter, any work covered by such a consolidated rule may be assigned to and performed by any employee of the class to which the rule is applicable irrespective of craft.

The number of mechanics, helpers and apprentices in the craft of machinist, sheet metal workers, blacksmith, boilermaker and electrician to be employed shall be determined as nearly as practicable by the ratio which exists in each seniority district among these crafts on the effective date of these rules.

2. CAR INSPECTORS

All agreements, rules, regulations, interpretations and practices, however established, which restrict the character of service of car inspectors are hereby eliminated. Car Inspectors may hereafter be required to perform any work which may be assigned to them provided such work is included in the classification of work rules applicable to carmen.

3. MODERNIZATION OF AGREEMENTS TO MEET CHANGING CONDITIONS

(a) Eliminate all agreements, rules, regulations, interpretations and practices, however established, which in any way handicap or interfere with the carrier's right to:

- (1) Transfer work from one facility or location to another facility or location;
- (2) Partially or entirely abandon any operation or to consolidate facilities or services heretofore operated independently;
- (3) Merge or coordinate in whole or in part two or more carriers;
- (4) Contract out work;

- (5) Lease or purchase equipment or component parts thereof, the installation, operation, maintenance or repairing of which is to be performed by other than employees of the carrier;
- (6) Voluntary or involuntarily discontinuing contracts whereunder a carrier performs service for another carrier or for any other party;
- (7) Effect technological changes;
- (8) Install labor saving equipment and machinery;
- (9) Trade in and repurchase equipment or exchange units;
- (10) Make effective any other changes in work assignments or operation.

(b) Whenever the introduction of a change in methods or operation such as those set forth in paragraph (a) hereof cannot be accomplished or where its benefits could not be fully realized without the consolidation, merger or elimination of one or more seniority districts, the carrier shall give thirty (30) days' notice to the affected organization or organizations. All parties affected by the change shall, before expiration of the notice period, engage in joint negotiations in regard to the consolidation, merging or elimination of one or more seniority districts. If agreement has not been reached within within thirty (30) days of the date of the notice, any party may submit the question for final and binding determination to an arbitration board consisting of a representative of each organization involved, an equal number of carrier representatives and a neutral member selected by the participating members. Should the parties fail to agree upon the selection of a neutral within ten (10) days from the date of the service of such notice, the parties, or any party, to the dispute may certify that fact to the National Mediation Board, which Board shall, within ten (10) days from the receipt of such certificate, name a neutral. If the parties to the dispute fail to agree upon the fee to be paid to the neutral, the National Mediation Board shall stipulate the amount of such fee. The arbitration board shall begin hearings within ten (10) days of the appointment of the neutral. Findings shall be rendered in writing by the arbitration board within thirty (30) days from the date of the beginning of the hearings on the particular dispute, such findings to be final and binding upon all the parties to the dispute, whether or not such parties appear before the arbitration board. The arbitration board shall not undertake to determine whether the change is to be introduced but shall confine its decision to the consolidation, merger or elimination of seniority districts. The arbitration award thus rendered may be made effective thirty (30) days after the date of such award or at a later date if the carrier, for operational or other reasons, so decides.

This provision will also apply in any and all other instances where a carrier desires to consolidate, merge or eliminate one or more seniority districts.

4. COOPERATION RETIREMENT

All employees subject to the provisions of this agreement who are seventy (70) years of age or over must retire from active service no later than ninety (90) days subsequent to the effective date of this agreement. Thereafter the mandatory retirement age shall be progressively lowered until it is sixty-five (65) in accordance with the following schedule:

January 1, 1964—60 years of age
January 1, 1965—68 years of age
January 1, 1966—67 years of age
January 1, 1967—66 years of age
January 1, 1968—65 years of age

Existing agreements which provide for retirement at an earlier age than herein set forth remain in full force and effect.

5. STARTING TIME

(a) Eliminate all agreements, rules, regulations, interpretations and practices, however established, which limit or restrict a carrier in fixing or changing the starting time or quitting time of employees or provide for uniform starting or quitting times.

(b) The starting time of employees may be at any time except between 12:01 A.M. and 5:00 A.M., and the starting time of any employee or group of employees at a point or facility shall not be restricted by reason of the starting time of any other employee, group of employees, or shift. The starting time will be designated by the Carrier, and may be changed on not less than twenty-four (24) hours' notice.

(c) If it is desired that a starting time be established between 12:01 A.M. and 5:00 A.M., the matter will be handled between local officers of the Carrier and of the labor organizations involved looking toward agreement responsive to operational needs.

6. CHANGE OF ARTICLES IV, AUGUST 21, 1951 NATIONAL AGREEMENT

Eliminate Note 1 to Article IV of the August 21, 1951 Agreement between the Carriers represented by the Eastern, Western and South-eastern Carriers' Conference Committees and the employees thereof represented by the Employees' National Conference Committee, Fifteen Cooperating Railway Labor Organizations. This contemplates the elimination of that part of all agreements, rules, regulations, interpretations and practices, however established, which impose the restrictive

principle contained in Note 1 to Article IV of the August 31, 1934 Agreement.

7. GENERAL

(a) Where, in relation to any of the above proposals, an agreement, rule, regulation, interpretation or practice, however established, exists which is more favorable to the Carrier, such agreement, rule, regulation, interpretation or practice may be retained.

(b) Where, in relation to any of the above proposals, no agreement, rule, regulation, interpretation or practice exists which imposes the limitations or restrictions which would be eliminated by such proposal, the fact that the subject matter is included in this uniform Attachment A is not to be construed as an admission that such limitation or restriction exists on this Carrier.

*Y. in
Org
11-14-68*

1. Provisions of Mediation Agreement A-7030, dated September 25, 1964 will be amended pursuant to notice of March 25, 1968, Appendix A.

2. The Carrier will enter into an agreement with the Organizations to govern application of Article II of Mediation Agreement A-7030, as amended. Such agreement will include, but not necessarily be limited to, the following:

(a) A definition of the term "minor transaction" as that term is used in Article II, Section 2, for which advance notice will be required.

(b) A definition of "significantly greater cost" shall be agreed to between the Carrier and Organizations.

(c) A requirement that the Carrier shall give advance notice to the Organizations of its intent to contract out work set forth in this Agreement.

(d) A list of the types of itemized data that the Carrier will be required to furnish the Organizations pursuant to the work set forth in this agreement; also in cases where no advance notice is given.

3. Before the Carrier can contract out work not specifically set forth in this agreement and/or in the classification of work of the individual crafts, but which is currently being performed by them or work that has been or could be performed by them, and which is not the work of another craft, the Carrier and the Organizations involved will negotiate an agreement covering such transaction, and the work shall not be subcontracted until an agreement is reached.

4. When the Carrier contracts out work, unit exchanges or purchases new equipment or component parts in violation of this agreement, or fails to give advance notice in writing to the General Chairman of the craft or crafts involved, which shall also be a violation of this agreement, any claims filed as a result thereof shall be allowed in an amount of compensation not less than the amount of hours of compensation the employee or employees would have received had they performed the work, this compensation to be in addition to any other compensation received by said employee or employees during the time the work was being subcontracted.

June 17

ARTICLE II - SUBCONTRACTING

*read from
mediation records
& signed 1/17/69
3:30 p.m.*

Section 1

(a) That work set forth in the classification of work rules of the agreement between System Federation No. 95 and the Chicago, Burlington and Quincy Railroad Company and/or shown in general form in Appendix A of this agreement, or work generally recognized as work of the craft or crafts parties to this agreement and/or work brought about by changes or modernization in equipment or methods in operation shall not be contracted out unless and until the Carrier has met all of the conditions set forth in Section 2 of Article II of this agreement.

(b) That unit exchange, purchase of new equipment or parts, the manufacturing, repairing and/or rebuilding of which is work set forth in the classification of work rules of the agreement between System Federation No. 95 and the Chicago, Burlington and Quincy Railroad Company and/or shown in general form in Appendix A of this agreement, or work generally recognized as work of the craft or crafts parties to this agreement and/or work brought about by changes or modernization in equipment or methods in operation shall be prohibited unless and until the Carrier has met all of the conditions set forth in Section 2 of Article II of this agreement.

(c) That the work set forth in the classification of work rules of the agreement between System Federation No. 95 and the Chicago, Burlington and Quincy Railroad Company and/or shown in general form in Appendix A of this agreement, or work generally recognized as work of the craft or crafts parties to this agreement and/or work brought about by changes or methods in operation shall apply to leased equipment to the same extent that it applies to Carrier owned equipment.

The introduction of new equipment, machines, tools and technological methods shall be included in this agreement at time of introduction by this Carrier and is considered a part of the protective sections of the total agreement until reduced to writing and included herein.

Section 2 - Advance notice, submission of data, conference.

(a) If the Carrier believes it to be necessary to subcontract work, unit exchange or to purchase new equipment or parts, the work of which is work set forth in Section 1 of this agreement, shall give the General Chairman of the craft or crafts involved notice of intent to contract out, or unit exchange, along with its reasons therefor, together with supporting data, in writing. Supporting data shall be understood to mean but not be limited to that contained in Appendix B of this agreement.

(b) The General Chairman or his designated representative will notify the Carrier within ten (10) days of the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the Carrier shall give such representative of the Organization at least ten (10) days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the Carrier or the Organization may proceed to process the dispute to a conclusion as hereinafter provided.

(c) The Carrier shall be required to maintain an apprenticeship program with a ratio of not less than one apprentice for each five mechanics in each respective craft.

(d) The Carrier shall be required to re-call all furloughed shop craft employees in order to perform the work outlined in this agreement.

(e) The Carrier shall be required to work employees on an overtime basis and/or

establish second and third shifts in order to perform the work outlined in this agreement.

(f) The Carrier shall be required to fill vacancies created through attrition, and will expand their forces to perform the work in this agreement.

(g) Carrier shall be required to expand their facilities and/or upgrade their equipment to perform the work covered by this agreement.

APPENDIX A

(a) The work listed for the purpose of this agreement is not limited but shall include classification work rules, wrecking service, inspection, repair, rebuilding and maintenance of all Carrier owned or leased railway rolling stock of whatever type, make, or model, and inspection, repair, rebuilding and maintenance of all parts thereto of whatever type, make or model. Railway rolling stock as referred to herein shall be understood to include but not be limited to, all locomotives, all passenger cars, sleeping cars, coaches, dining cars, baggage cars, suburban service cars, all types of freight cars and cabooses, plus the building, rebuilding, maintenance, inspection and repair all box cars, and any other cars that has been or could be built in Carrier facilities.

(b) Inspection, repair, rebuilding and maintenance of the following Carrier owned or leased equipment of whatever type, make or model. Automotive equipment, roadway, roadbuilding and earth moving equipment, track and track building equipment, hole digging and trenching equipment, cranes, hoists, tractors, trucks and derricks, welding machines, battery chargers and light and/or power plants, also inspection, repair, rebuilding and maintenance of all parts thereto of whatever type, make or model. Automotive equipment as referred to herein shall be understood to mean, but not be limited to, automobiles, trucks, tractors and trailers including those used on public highways. Roadway, roadbuilding and earth moving equipment as referred to herein shall be understood to include, but not be limited to, tractors, trucks, shovels, draglines, bulldozers, trenching, cable laying and hold digging machinery. Track and track building equipment as referred to herein shall be understood to include, but not be limited to, track motor cars, gang motor cars and trailers, track laying equipment, tamping equipment including electromatic tampers and any other machinery or equipment used to build, lay or maintain track.

(c) Construction, installation, inspection, testing, maintenance, rebuilding, replacement, dismantling and repair of all Carrier owned or leased telephone or telegraph pole lines, wires, cables, crossarms, braces, anchors, guys and appurtenances thereto. All poles towers and structures used for micro wave, radio, television and similar purposes. All lights, wiring, conduit, cables, antennas, anchors, guys and braces attached to same. All telephone and telegraph equipment, public address systems, public radio broadcast transmitters receivers and apparatus, television transmitters, receivers and apparatus, Carrier transmitters, receivers, repeaters and related equipment, micro wave transmitters, receivers, repeaters and related equipment, multiplexing equipment used with Carrier or micro wave, train communication systems, intratrain communication systems, automatic car identification systems, stationary and/or mobile radio transmitters, receivers and related equipment, facsimile transmitting and receiving equipment, tape recorders, beacon and aircraft warning lights, automatic train or engine control systems, automatic message center equipment, electric scales and weighing machines, all other systems, equipment and devices used for communication or control purposes.

(d) Construction, installation, inspecting, testing, maintenance, rebuilding, replacement, dismantling and repair of all Carrier owned or leased power pole lines, towers, structures, wires, conduit, guys, anchors, fixtures, crossarms, braces and appurtenances attached thereto, flood light towers and/or poles, transformers, transformer banks, lightning arresters and cutouts, electric switch heaters and/or snow melters or snow blowers and electric controls on gas. switch heaters and/or snow melters and snow blowers, motors, generators, motor generators, rotary converters, electric clocks, electric lighting fixtures, motors and generators in buildings, yards and shops, fire alarm equipment, electric controls on heaters, boilers and other equipment in shops, stations or buildings, work in power houses and substations, work on primary circuits owned or leased by carrier, related devices and/or equipment to include all wiring and conduit, cables, batteries, generators and testing equipment used in connection with the above.

(c) The construction, inspection, testing, maintenance, rebuilding, replacement, dismantling and repair of all Carrier owned or leased pipe lines, pipe fittings, clamps and brackets, and applying and removing of all insulation, jackets or protective covering to pipes, fittings, ducts, manifolds, boilers and steam separators, including connecting, disconnecting, removing and applying, clamping; laying-out, fabricating, fitting, bending, threading, cutting and repairing of pipes used to convey air, water, gas, oil, fuel, sand, steam, chemicals, liquids of all kinds, liquid refrigerant pipes which would also include substitute materials of the above material.

All welding, fusing, brazing, metalizing, bonding, cutting and burning of metals and pipes with such as oxycetylene, electric, thernit, heliarc, or other processes used on such work, in or on structures, shops, buildings and yards including appurtenances in all departments where this work is performed and as applied to stationary boilers, pumps, fueling, water and sanding stations, facilities or installations; installing steam heat radiators and hump or classification yards, boiler water treating plants, water softeners, demineralizing plants, steam return lines, air tanks, air compressors and filter washers. The above to apply *to all on & off the Carrier facilities* system wide. *Perk / Structures - maintenance*

(f) Cleaning locomotive parts including oil filters, machinery, pumping oil from tank cars to storage tanks and locomotives, refining and reclaiming of oil, loading and unloading sand, operating sand drying equipment and all other work preparing and storing sand, operating turntable and transfer tables, washing, wiping and otherwise cleaning locomotives, supplying locomotives and/or cabooses with fuel, sand, oil, water, tools, flagging equipment and train crew supplies. Assisting hostlers in the movement and switching of locomotives and locomotive units in and out of service tracks, engine houses, shops and other facilities for working, refueling, sanding, cab supplies and necessary maintenance and repairs, operating locomotive units where no hostlers are assigned, operate motor trucks, tractors, and cranes used in loading, unloading and

delivering of material, or when used to pick up scrap and other work in connection with cleaning shops and yards, and all cleaning of freight cars, box cars, buildings, shop grounds and picking up scrap.

NOTE: Nothing in any of the foregoing shall give any craft the right to perform the work of another craft, neither shall the carrier have any right to transfer work from one craft to another without the written consent of the General Chairman of the craft or crafts involved in each specific case.

all crafts.

APPENDIX B

Reasons thereof and supporting data shall be understood to include but not be limited to:

1. Copies of contractors bids broken down into man hours, labor charges, shop overhead, material costs and specific work performed.
2. Blueprints - Drawings - sketches, specifications, manufactures description Model # & any other information which will properly describe or identify the job, equipment, parts, or units involved & Covered by this Agreement.
3. Purchase Agreements containing warranties and guarantees return exchange options or rights, reciprocal agreements with Manufacture's, other Rail Carriers dealing with leasing of or exchange of Locomotives, Cars, Roadway Equipment, Communication's Equipment & Electrical Equipment between the C.B. & Q & any other Carrier or Carriers - (or) Companies or Business. Copy of, and full explanation of any options under the warrantee or guarantee. NOTE: It is understood that no warrantee or guarantee shall exceed two years or 200,000 miles whichever comes first.
4. Copy of Carrier's purchase orders with specifications and cost of labor and materials.
5. Specific data relative to guarantees as to job completion and placed in service on the Carrier. And actual date placed in service on the guarantee.
6. Copy of invoices received from the subcontractor relative to the transaction, broken down into man hours, material costs and specific work performed.

7. Machinery, tools, gauges & any other technical devices actually need to accomplish the manufacturing, building, repairing, refurnishing, modifying, improving of the article, object, part or unit involved in said transaction or under question or dispute.

NOTE: The disposing of property, buildings, machines, tools, or equipment, whole or in part of the furloughing of employes within the Craft or Class shall not be considered proper data or excuse for contracting out of work whole or in part.

AFFIDAVIT OF I. C. ETHINGTON ON BEHALF OF PLAINTIFF

DOCKET ITEM 11

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY

Plaintiff,

v.

RAILWAY EMPLOYES' DEPARTMENT,
AFL-CIO, et al.,

Defendants,

Civil Action No. 630-69

AFFIDAVIT OF I. C. ETHINGTON
ON BEHALF OF PLAINTIFF

I. C. Ethington, being first duly sworn according to law, deposes
and states as follows:

1. I am Vice President Operating Department of Chicago, Burlington
& Quincy Railroad Company (hereinafter referred to as "Burlington" or "CB&Q").
My business address is 547 West Jackson Boulevard, Chicago, Illinois. I am
responsible for the operation of the railroad, including jurisdiction over
trains, stations and yards, and also the care, maintenance, repair, improve-
ment, and replacement or acquisition of all railroad property pertaining to
the operation; and enforcing observance of proper rules and regulations for
the safe operation of trains and engines. Among the departments reporting
to me are the Mechanical, Engineering and Communications Departments, which
are directly involved in this labor dispute.

2. After graduating from Iowa State University in 1948 with a
B.S. in Civil Engineering, I was employed by the CB&Q in the engineering
department and transferred to the operating department as Trainmaster at
Denver in 1952. Thereafter, after serving at various locations on the CB&Q
as Trainmaster, I was promoted to Assistant Superintendent; Superintendent;
Assistant to Vice President-Operation; General Superintendent of Transportation;
General Manager; Assistant Vice President-Operations in 1962; and was elected
to my present position effective December 1, 1965. I have completed trans-
portation courses at Northwestern University and The Advanced Management Program
at Harvard University. I am a registered professional railroad engineer, a

member of the American Railway Engineering Association, and serve on the General Committee of the Operating-Transportation Division of the Association of American Railroads. Statements in this affidavit are based on my personal knowledge of the facts, or on records maintained by the Burlington in the regular course of its business.

3. The purpose of this affidavit is to explain some of the adverse effects on the Burlington's operations that would be caused by agreement to the shop unions' current demands. At the outset, it should be noted that the Agreement of September 25, 1964 (Exhibit A to the complaint) already imposes broad and substantial restrictions on the railroads with respect to the contracting out or shopping out of work. Notwithstanding the restrictions imposed by the 1964 agreement, the shop unions now seek to impose additional restrictions on the Burlington's right to contract out work and to acquire new or rebuilt equipment needed for the railroad's operations. The unions' demands, including their latest proposal, would require the Burlington to agree to give the unions a veto over the contracting out of any work within the shop crafts' classification of work rules, or the acquisition of equipment, the manufacture or construction of which is within the shop crafts' classification of work rules. Such a veto would transfer vital functions of management to the General Chairmen. These union officials would be vested with the absolute power to decide whether many items of work would be performed by members of their organizations or by outside concerns. Yet these union officials do not have responsibility for quality of the product, cost of performing the work, or the effect of the decision on the economic condition on the railroad company and its ability to serve the public. Moreover, the veto sought by the unions would extend to the acquisition of much equipment that is vitally needed for railroad operations, equipment that the Burlington is not prepared to manufacture. Thus the unions could require the railroad to duplicate extensive manufacturing operations which are already established and have no proper role in the railroad's business of transportation. Extremely large costs and excessive delays in the acquisition of equipment would be entailed, thus interfering with railroad operations, and service to the public.

4. The above can be demonstrated by an examination of the shop crafts'

classification of work rules. Thus, Rule 45 of the machinists' rules provides that:

CLASSIFICATION OF WORK

Rule 45. Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power) pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle wheel and tire turning and boring, engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work.

Under the unions' current demands, anything within the scope of the above rule would be subject to the proposed prohibition against contracting out. Given the broad scope of the rule, the unions could claim that they have a veto that extends not only to the contracting out of work which is presently done by the Burlington's machinists, and work which may have been done at one time or another in the past, but also to the manufacture of all the metal parts used in locomotives, and conceivably to the manufacture of the machinery and tools used in manufacturing such metal parts.

5. Similarly, Rule 57 of the blacksmiths' rules provides:

CLASSIFICATION OF WORK

Rule 57. Blacksmiths' work shall consist of forging, welding, heating, shaping and bending of metal; tool dressing and tempering, spring making, tempering and repairing, potashing, case and bichloride hardening; flue welding under blacksmith foreman; operating furnace, bull-dozer, forging machines, drop-forging machines, bolt machines, and Bradley hammers; welding or building up of frogs, switch points, cross overs, puzzle switches and low rail joints when done in Maintenance of Equipment shops, hammer-smith, drop-hammermen, trimmers, rolling mill operators; operating punches and shears doing shaping and forming in connection with blacksmiths' work, oxy-acetylene, thermit and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work.

If the Burlington agreed to the unions' current demands, the Blacksmiths might well contend that the railroad is required to manufacture all hand holds, sill steps, brake rigging, and other forgings for freight and passenger cars. Rule 62 of the sheet metal workers' rules and Rule 50 of the boilermakers' rules contain analagous provisions. If the Burlington agreed to the shop unions' current demands, I would expect contentions from these crafts similar to those which I would expect from the Blacksmiths.

6. Similarly, Rule 75 of the carmen's rules provides:

CLASSIFICATION OF WORK

Rule 75. Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight train cars) painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing and removing and applying wooden locomotive cabs, pilots, pilot beams, running board, foot and head-light boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars, applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats);

all other work generally recognized as painter's work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairs, oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

If the Burlington agreed to the shop unions' current demands, I would expect the Carmen to claim that they have a veto over the acquisition of any railroad cars by the Burlington and that they have the right to make such cars, a matter which I will discuss further below.

7. Finally, Rule 70 of the electrical workers' rules provides:

CLASSIFICATION OF WORK

Rule 70. (a) Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights, and headlight generators, electric welding machines, storage batteries, axle lighting equipment, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors and trucks. Operators of electric cranes of 40-ton capacity and over and all other work generally recognized as electricians' work.

(b) Men employed as generator attendants, motor attendants (not including water service motors), and substation attendants, who start, stop, oil and keep their equipment clean and change and adjust brushes for the proper running of their equipment, power switchboard operators.

(c) Electric crane operators of electric cranes of less than 40 tons capacity.

If the Burlington acceded to the unions' current demands, the unions might well contend, in view of the broad scope of the electrical workers' classification of work rule, that electrical workers employed by the Burlington are entitled to install all the wiring for generators, meters, motors, rheostats, controls in new diesel locomotives and to install and wire the countless electric motors used all over the Burlington System.

8. The extremely adverse effects on the Burlington's operations of the agreement currently demanded by the unions can be further illustrated by several concrete examples, a number of which I shall describe in the remainder of this affidavit. In each example I will discuss the particular work involved and how the proposals of the organizations would apply to the Burlington's present operations.

Construction of Railroad Cars.

9. As stated above, the unions' demands include a provision that "work set forth in the classification of work rules" could not be contracted out without prior agreement. It has been reported to me that during the course of negotiations, the unions have made it plain that they want a voice in the purchase of new railroad cars, and they would apply the agreement so as to prohibit the purchase of any new freight cars except with union approval.

10. During recent years, passenger cars have been purchased from outside manufacturers rather than being assembled by railroad employes. Of our present fleet of 642 passenger-train cars, only 36 were assembled in our shops by Burlington employes, all of which were baggage cars constructed over 16 years ago. We are presently considering the acquisition of new double deck passenger cars for our commuter service. The March 25, 1968 notice would subject future purchases of passenger cars to the Brotherhood's veto power. In view of our total lack of experience in the construction of modern passenger cars, use of veto power vested in the unions by the proposed agreement would virtually preclude us from adding cars to the passenger fleet.

11. At Havelock, Nebraska, near Lincoln, Nebraska, we have a facility at which railroad employes have assembled several types of freight cars. However, it has never been our practice to construct all of our freight cars with Burlington employes. During the past year no freight cars have been built at Havelock, as the entire facility has been utilized for rebuilding and repairing freight cars. For many years, it has been our practice to purchase some freight cars from outside manufacturers as well as to assemble some with our employes, the quantity of each depending on the comparative costs, material availability, scheduling and other business dominated factors. We obtain competitive prices from several car builders as well as our own Havelock Shop. Because of attractive offers, during the past 12 months all new freight cars have been purchased from outside manufacturers rather than being constructed at our Havelock Shop.

12. In our program of new freight cars, Havelock Shops were underbid in all instances. The following bids received illustrate how competitive pricing factors control the decision as to how new freight equipment is acquired.

Quotations for 400 Open Top Quadruple Hopper Cars

Bethlehem Steel Corporation	\$13,625.00 each
Greenville Steel Car Company	13,655.00 each
Magor Railcar Division	14,300.00 each
CB&Q RR - Havelock Shops	14,408.00 each
Berwick Forge & Fabricating Co.	15,340.00 each
Pullman Standard Division	15,500.00 each

Quotations for 305 Box Cars - 50'6" 70 ton Capacity

	205 cars w/1 dividers	50 cars w/1 dividers and side fillers	50 cars w/df2 equipment
Berwick Forge & Fabricating Co.	\$16,332.00 ea.	\$17,157.00 ea.	\$16,603.00 ea.
CB&Q - Havelock Shop	17,095.00 ea.	17,834.00 ea.	16,960.00 ea.
American Car & Foundry Div.	17,780.00 ea.	18,520.00 ea.	18,170.00 ea.
Pullman Standard Div.	18,950.00 ea.	19,860.00 ea.	18,675.00 ea.
Thrall Car Mfg. Co.	19,686.00 ea.	20,656.00 ea.	19,651.00 ea.

It will be noted that the railroad's shops at Havelock were underbid \$783 per car on the 400 hopper cars, or a total of \$313,200.00. On the 305 box cars the lowest bidder was between \$357 and \$763 per car under the Havelock Shops, for a total of \$208,115. The above bid prices were made after detailed specifications had been furnished to the manufacturers.

13. In addition to the savings reflected by the figures shown above, the manufacturers are making earlier delivery than would be possible if Burlington constructed these new freight cars. Havelock Shops is fully occupied at present with programs for the rebuilding of older cars. We estimate that the hopper cars would have been delivered 10 months later if constructed at Havelock. This would have meant a loss of \$1,250,000 in gross revenues to the Burlington. The 305 box cars would have taken 6 months longer to construct at Havelock, at an estimated loss of \$1,130,600 in gross revenues.

14. In short, the agreement sought by the shop crafts would cause delay and excessive costs in the acquisition of new freight cars. Permission would have to be obtained from several General Chairmen before any orders could be placed, because more than one craft is usually involved. If any of them refused permission the new freight cars would have to be constructed at our own Havelock Shops, without regard to loss of revenues, costs of construction, capital expenditure required, etc.

15. Another reason for not constructing all freight cars is that there are many new types of cars, built in small quantities for particular commodities which require either special patented devices or designs. For example, we recently purchased five hooded flat cars, designed by Evans Products Co. for the hauling of coiled sheet steel. This special equipment was purchased for the steel industry by other railroads, and it was necessary for us to secure ownership to avoid losing traffic. This design of car carries four large coils of steel, facilitates loading and eliminates bracing and blocking. We were able to get a good price by placing our order for five cars at the ends of a larger production of the same car by the Evans Co. It would have been impractical to attempt a small order such as this at Havelock.

16. It is reasonable to expect that our need for specialized freight cars will continue to increase in the future. The orders for highly specialized freight cars are usually small and the designs and components are not readily obtainable. Under the unions' current demands they could refuse permission to purchase specialized cars and thereby deprive the Burlington of its share of the relatively high revenue traffic that requires such cars.

17. The building of new freight cars on this railroad is essentially a job of assembly. In other words, we purchase new underframe parts, side, tops, ends and trucks, put them together and paint the fully assembled cars. The demands of the unions in this case could be construed to require that Burlington take on the manufacture of these component parts, unless permission was given to purchase component parts. As stated above, Carmen's classification

of Work Rule 75 includes "operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work." Blacksmiths' classification of Work Rule 57 includes "forging, welding, heating, shaping, and bending of metal." Boilermakers' classification of Work Rule 50 includes "building *** car tanks and drums." Under the unions' current demands, the union could claim that none of the items requiring work listed above could be purchased without the unions' consent.

Reconstruction of Freight Cars.

18. Historically, the Burlington Havelock Shops have performed reconstruction of freight cars, and are fully occupied at present in that line of work. For 1969 we programed 1,560 freight cars for reconstruction. In addition, we will reconstruct approximately 1,200 refrigerator cars this year, repair 550 wrecked cars, and upgrade approximately 500 box cars for ammunition or other high grade loading, and make heavy repairs to about 1,000 other various type cars.

19. We have had one instance where 800 Burlington freight cars were rebuilt by an outside concern in 1965. These cars were needed for grain loading and the Havelock Shops were working at full capacity all that year. Notice was given the organizations that the subcontracting would occur, and the reasons were also given, along with assurance that none of the employees at Havelock would be adversely affected. The carmen challenged this transaction before Special Board of Adjustment No. 570, an arbitration tribunal created for the purpose of deciding disputes under the 1964 agreement. The Board ruled that Burlington's action had not violated existing agreements.

20. Agreement to the unions' current demands would preclude the Burlington from ever contracting out the reconstruction of freight cars. The fact that the adjustment board case referred to above was so bitterly contested indicates to me that no permission to do so would be granted. Outside firms can offer attractive prices for such work, and the time element is always an important economic factor to be considered. However, under the unions' demands these considerations would become irrelevant and the sole prerogative of whether freight car rebuilding would be contracted out would rest with the unions.

Locomotive Component Parts

21. The Burlington Railroad maintains a heavy repair shop for locomotives at West Burlington, Iowa. It also maintains running repair shops for locomotives at Lincoln, Nebraska, and Cicero, Illinois. Almost 90% of the Burlington's locomotives were manufactured by General Motors, Electro-Motive Division. This has justified keeping all of these shops reasonably well equipped to handle the majority of repairs to these locomotives.

22. In recent years this railroad has acquired some of the newer type General Electric locomotives. The number now comprises slightly over 10% of our motive power. New equipment and tools would be required to accomplish repairs to the General Electric engines in an efficient and economical manner. It would cost Burlington a substantial sum to provide machinery to make repairs to General Electric locomotives.* This expenditure would not be justified in view of the limited number of General Electric locomotives to be maintained.

23. One of the first disputes that arose under the Mediation Agreement of September 25, 1964, in regard to the repair of locomotive component parts, concerned the overhaul of traction motors for the General Electric locomotives. These traction motors differed from the Electro-Motive traction motors because of their design. Our employees had never worked on this type of traction motor. Neither did we have equipment at our West Burlington Shops to re-wind the armatures. Consequently, these traction motors were returned to the General Electric Company for the necessary overhaul.

24. Both the machinists and the electricians objected and progressed the dispute to Special Board of Adjustment No. 570. The claims were denied in Awards 59 and 60. However, the unions now seek to have all this work, and much more, subjected to a union veto so as to be able to prevent the Burlington from ever again subcontracting it.

25. Another example of the conditions these unions seek to place on the Burlington occurred in January of 1968. General Electric locomotive unit 108 experienced a badly damaged engine due to freezing. It was necessary to return the engine to General Electric for major repairs. The unions claimed that the repairs should have been made at our West Burlington Shop, regardless of our lack of equipment and tools needed to handle the repair.

26. Another example which demonstrates the effect of the unions' demands involves four of our newer-type Electro-Motive units. On December 16, 1968 vandals in the town of Walnut, Illinois broke the lock and threw a switch in front of these locomotives causing derailment and severe damage. This occurred when there was an extreme shortage of motive power to handle grain cars on our railroad. We had found it necessary to lease locomotives from the Union Pacific Railroad and to transfer passenger locomotives into freight service to handle this business. At the same time our heavy repair shop at West Burlington was working to capacity and was already behind with its shopping program for the year due to other locomotives that were in the shop for maintenance and repair.

27. In order to get these four new type locomotives repaired and back in service as quickly as possible, I decided to send two locomotives to Electro-Motive and to repair the other two at our West Burlington Shops. This was justified under the 1964 agreement which permits such action when "the required time of completion of the work cannot be met with the skills, personnel, or equipment available on the property." The unions were notified of the necessity for sub-contracting work on two of the locomotives. The unions objected, and if they had the power of veto that they now seek, we would not have been "permitted" to have this essential work performed by Electro-Motive.

28. Another example involved General Electric locomotive 144 in February of this year. This locomotive sustained damage when the counter-weight on the crankshaft broke and damaged the engine. The unit was moved dead in train to our West Burlington Shop where a replacement engine was installed by our forces. The damaged engine will be returned to General Electric because of our lack of machinery and tools to make the necessary repairs. Under the unions' current demands the Burlington would be precluded from contracting out this work.

29. In January of this year, generators on three General Electric locomotives on this property failed within a five-day period. In each case the units were moved to the Lincoln Diesel Shop. Our forces at that facility proceeded with all known methods to eliminate the electrical failure, including cleaning out the generators with dry alcohol, blowing them out with shop air, sealing them and forcing dry air through them, and running the generator under

power on load grids. None of these procedures were successful, so it was necessary to send the units to the West Burlington Shop where our forces removed the defective generators and installed unit exchange generators obtained from the General Electric Company. The General Electric Company has advised that the generators removed from two of the units had to have the armatures completely re-wound. The generator from the third unit had a moisture ground, plus damage to the field coil insulation. Burlington efforts to correct the electrical failures on these generators were unsuccessful, making it necessary to exchange with General Electric. Our forces at West Burlington have never re-wound a General Electric main generator armature of this type. The Mechanical Department estimates it would require at least 400 man-hours at West Burlington with present equipment. This is a job that only one man at a time can work on for approximately 80% of the time. The idle time for each locomotive undergoing such repairs would be wasteful.

30. In the above example, the unions contended the work should have been performed on the property. To avoid excessive delay to the locomotives it would have been necessary to have a stock of generators on hand at West Burlington Shop. Main generators cost approximately \$29,000 each and it is uneconomical to have such a capital investment for about 10% of the motive power on this railroad. Had the present union demands been in effect, unit exchanges would have been vetoed. Without spare generators in stock, the idle time for two of the diesel locomotives in that case would have been about nine weeks while the repairs were being made on the property. In addition to the investment represented by each locomotive standing idle, we would be subjected to considerable loss of

freight revenue due to not having the power available to handle the business.

31. Another case involved twenty air compressor cylinders that were removed from diesel locomotives on this railroad and were to be scrapped. These cylinders could no longer be reclaimed by Burlington forces, or continued in service, because they were beyond the tolerances specified for our reclamation. They had been set aside for scrap value only. However, we learned that Triangle Engine Rebuilders, Inc. of Chicago, had developed a new process of reclaiming cylinders by re-sleeving them back to standard size. It was decided to have the twenty scrap cylinders sent to that concern to try out this experimental process. This was outside the classification of work rule for the machinists on this railroad as we understand those rules, because no such work had ever been performed by the railroad or any other concern to our knowledge on air compressor cylinders. Regardless of this fact, the union was apprised of our intentions as a matter of information. The General Chairman of the Machinists' Union protested to our labor relations department. However, this was work that had never before been attempted by the shop craft employees and which, therefore, could not be taken away from them. It will be some time before it can be determined whether this experimental process is satisfactory or practical from a cost standpoint.

32. The above are examples of our past experience with the Shop Craft Unions under the present restrictive provisions of the Mediation Agreement of September 25, 1964. Under that agreement, however, the Burlington

has some criteria by which to determine whether it is permissible to have others perform certain locomotive repairs when circumstances justify or require contracting out. Under the unions' present demands, contracting out such items would be permissible only when the Burlington is able to obtain the General Chairmen's consent. For reasons mentioned above, Burlington management must retain the right to make decisions with respect to purchase and repair.

Electric Motors

33. Under the unions' current demands, the Burlington would be precluded from contracting out the repair of any electric motor except with union consent. For many years, however, the Burlington has used outside contractors to repair electric motors. It is not feasible to have a spare replacement motor in stock for all electric motors in use on the railroad. That is what would be necessary to comply with the present demands to have all motors sent to our own shop for repairs, if we were to avoid shutting down the equipment run by these motors while the motors are being repaired. A considerable loss of time would accrue in sending an electric motor in from an outlying point several hundred miles for repairs and return.

34-35. For example, the electric motor on the heating plant at Daytons Bluff, Minnesota, failed this winter and it was necessary to utilize the heating boiler on a diesel locomotive to provide heat until this electric motor could be sent to a local electric shop for repairs and be returned. To have sent the motor to our own electric shop at Aurora, Illinois could not be justified under these circumstances, in which it was necessary to use a locomotive as a substitute heating plant.

36. Another case involved the electric motor for the water pump at our Montgomery, Illinois, stockyards. When that motor failed, it was imperative to provide water for the stock being handled at that facility. A fire hose was connected to a nearby city hydrant so that water could be provided while a local electric shop promptly repaired the motor. Our own electric shop forces were fully occupied on other important work.

37. Electric motors are utilized in this industry to a great extent and range from the traction motors in each diesel locomotive to large motors operating elevators, turntables, drop-pit tables, hoists, etc. down to those used in air conditioners, electric fans and smaller. It is virtually impossible to keep inventory of all parts for these various motors for our own electric shop, but the major electrical contractors are able to do so because that is their primary business.

38. The Burlington is in the transportation business and not the electric motor repair business. To set up an electric shop large enough to handle all of our electric motor work, and to have an inventory of parts of sufficient size to insure no delay to repairs being completed, would require a sizeable capital expenditure. Even with this expenditure we would be unable to meet our frequent needs to get electric motors repaired in the most expeditious manner possible and back into service. The down time of an electric motor being shipped in to a centralized repair point and then being returned can often be more costly than the repairs to the motor itself. The two examples cited above are evidence of this fact.

Miscellaneous Manufacturing

39. Although the purchase of manufactured items has never been considered "subcontracting", under the unions' current demands the purchase of much manufactured equipment would be subject to a union veto. In the past it has been necessary for railroads to engage in the manufacture of a variety of miscellaneous items. However, such miscellaneous manufacturing has gradually been discontinued.

40. An example of this on the Burlington involved the Aurora Brass Foundry. This facility was built over a hundred years ago, and until 1966 this foundry was used to manufacture locomotive traction motor support bearings, car journal brass and miscellaneous brass hardware items. At that time we employed seven members of the molders' craft, represented by the Sheet Metal Workers' union, and I understand there were only three railroads in the United States still manufacturing journal brass.

41. After a study indicated that a considerable savings could be effected, the Aurora Brass Foundry was discontinued and Burlington purchased the items formerly manufactured. The Sheet Metal Workers' and Machinists' organizations challenged the discontinuance of the Aurora Brass Foundry before Special Board of Adjustment 570. However, the Board rejected the unions' contentions.

42. The foundry had been abandoned and the building demolished, but the former molders were protected; i.e., they were given other employment in an adjacent Burlington shop with guaranteed earnings.

43. Under the unions' current demands, they could require Burlington to reconstruct a brass foundry and go back into the business of making journal brasses and other brass items. To do so would require a capital investment of \$800,000, and even with such a capital investment we still would not be able to produce brass items at a competitive cost.

44. In the past we have also manufactured a number of items, such as forgings for freight cars, tools, step boxes for getting on and off passenger trains, pipe nipples, train connectors, coach keys, and flagman cases. This type of miscellaneous manufacturing has been discontinued because it is more economical to purchase the products on the open market.

45. The unions' inclusion of purchasing new equipment as a form of subcontracting (when it actually is not) would require the Burlington to re-enter the manufacturing business and to obtain expensive tools for this purpose. A modern manufacturing shop would involve a capital outlay of \$2,000,000, and even with such an investment we estimate that our manufacturing costs could not be competitive because of lack of volume. Moreover, the quality of the products we would manufacture could not uniformly hold to the same high standards of the companies in that particular line of business.

Warranty Items

46. Nearly all equipment purchased by the railroad or acquired in unit exchanges, including locomotives and work equipment, and much equipment that the railroad has overhauled, is acquired or returned to us with a warranty. Obviously the railroad should take advantage of these warranties. Since the unions' current demands would apply to any work that has ever been done, or that could be done by the six shop crafts, without any exceptions for work performed under warranties, acceding to these demands would place Burlington in the position of being the only railroad that could not take advantage of warranty protection on equipment. This would be an economic waste.

Communications Equipment

47. Following a study that was completed in June of 1966, we made a decision to install a microwave communication system on the Burlington. A notice was served upon the Electricians' Union in accordance with the 1964 Mediation Agreement. That notice provided information with respect to the contract to cover the engineering, furnishing and installation of the complete microwave system including towers, buildings, microwave equipment, antennas, waveguides, multiplex and other related equipment in the territory between Chicago and Galesburg, Illinois.

48. Due to the magnitude of the installation and the sophisticated equipment involved, which neither the supervision nor the employees were familiar with, and the need to complete the work promptly to keep up with the installation of computers in an overall communications modernization program, it was necessary to contract out the job. This contracting out was permissible under the 1964 Mediation Agreement criteria as follows: (1) "managerial skills are not available on the property," (2) "skilled manpower is not available on the property from active or furloughed employees," (3) "essential equipment is not available on the property," and (4) "the required time of completion of the work cannot be met with skills, personnel or equipment available on the property."

49. On July 1, 1968, the General Chairman filed a claim in behalf of Communications Department employees for the maintenance and repair of microwave towers and associated equipment. The unions wanted their members to do the painting, tightening of bolts, tensioning of guy wires and replacing of "dishes" and wave guides on the steel towers. Burlington is

not equipped to erect and paint steel towers of this height, and these items of work on the towers themselves were not considered to have been included in the maintenance of the microwave apparatus. The maintenance of the towers and attached equipment was a part of the contract with the contractor.

50. Under the unions' current demands, Burlington could be required to assign all such work to its own employees. If the agreement demands had been in effect in 1965 it is very likely that the microwave installation on this property would not have been made. To undertake the original installations it would have been necessary to school both supervision and employees on the technical aspects of this modern communication system and increase the forces considerably. After the installation work was finished and only the maintenance remained to be performed, we would have no further use for the skills and no further use for the extra employees. To operate in this manner would be wholly unreasonable.

Work Equipment

51. The Burlington owns about 1,600 work equipment machines, most of which are powered by internal combustion engines. This equipment includes cranes, shovels, draglines, bulldozers and other machinery used for the maintenance of the railroad. The Burlington had a facility at Havelock where much of this equipment was overhauled in winter months when certain roadway maintenance is not practical. There was a force of about 60 shop craft employees engaged in this work. Running repairs to the machines out in the field have always been accomplished by operators or supervisors who are not represented by the shop craft unions.

52. In recent years outside contractors have been bidding to perform this overhaul work. They offer attractive prices and more rapid return of the equipment compared to accomplishing the overhaul with our own forces. Because of the savings, outside contractors are now doing this work. In 1968 the resultant savings amounted to approximately \$165,000.

53. This subcontracting was also contested by the unions, even though job protection was afforded. The arbitration board ruled in our favor, that on cost basis, this was a justifiable subcontracting of work.

54. In the unions' current demands they have adamantly insisted that 100 per cent of this work be performed by their members. Acceding to this demand would require a new shop to perform the overhaul work in an efficient manner. We have estimated the cost of a new facility at \$1,100,000. Equipment would also have to be purchased at an additional cost of \$300,000. Performing this work on this basis would increase operating expenses by approximately \$100,000 per year.

55. One of our difficulties in making repairs to work equipment with shop forces was the large amount of "down time". This includes the time required to load a machine needing repairs on a flat car, ship it to Havelock, and unload it there for repairs or overhaul. There are numerous outside contractors strategically located on the railroad who can make

repairs in a much shorter period of time. For example, a bulldozer had a broken transmission housing at Herrin, Illinois, on January 10, 1969, and it could not be moved under its own power. A local contractor made repairs and placed this machine back in service January 16, 1969. On January 6, 1969 a track mounted clamshell at Kansas City required a complete engine overhaul. To move it to Lincoln would mean running a train at reduced speed. A local contractor performed the needed work and it was back in service January 15, 1969.

56-57. Also included in the work equipment category are a number of specialized machines with complicated devices. These are extremely modern pieces of equipment, such as electromatic tie tampers and liners, which are operated by one man and automatically raise, level, and line track and tamp the ties. These machines use infra-red lights for controlling the amount of surfacing and lining track. The light rays which are received from travelling dollies operated 100 feet ahead, feed an input to a computer which controls the machine itself. The unions' demands would require these complicated devices to be repaired by shop craft employees who are not trained to perform the work. At present these repairs are not attempted by the Burlington, but instead are being performed by representatives of the manufacturers.

Automobiles and Trucks

58. This railroad presently owns 164 automobiles and 529 trucks assigned at eighteen major terminals and at wayside and off-line points. This includes 85 hi-rail vehicles used by superintendents and other officers of the Company, which as the name implies, may be operated on either the highways or the rails. In this fleet of automobiles and trucks are 16 vehicles assigned to the Traffic Department at off-line points throughout the United States.

59. For some time we have maintained a small motor car shop at Aurora, Illinois, for repairing small track motor cars, platform vehicles, fork lifts and similar equipment. In addition, this shop was utilized as time would permit, for handling minor repairs to automobiles and trucks assigned in the Aurora area. When the first hi-rail cars were developed, the Burlington manufactured the rail wheels and mechanism for installation on a standard automobile. For the last several years, the Burlington has purchased hi-rail assemblies offered by outside manufacturers because of cost. If the unions' current demands were in effect, we might be required to resume manufacture of these hi-rail devices.

60. We have made an exhaustive study to determine how much it would cost to comply with the unions' present demands to have all automotive maintenance work performed on the property with our forces, rather than in local garages and service stations. It was found that to be at all realistic about sending automobiles any distance for repairs, Burlington would require two major shops - one at Aurora, Illinois and another at Lincoln, Nebraska. In addition, properly equipped trucks for minor repairs would be operated out of Hannibal, Missouri, Alliance and McCook, Nebraska. The initial capital expenditure to set up and equip these facilities would be \$540,000.

That is only the initial investment, and it is estimated that the annual cost to the CB&Q of using these facilities to maintain our own automotive equipment would be \$383,238. This would be an increased cost to the Burlington of more than \$211,000 per year in addition to the initial investment.

61. There is nothing in the above figures that would account for the additional out-of-service time involved when a vehicle is sent in for major repairs to either Aurora or Lincoln, nor the time lapse for a truck to reach the location of the vehicle to make only minor repairs.

62. The above figures demonstrate that such a procedure is impractical and unjustified. The system-wide practice on this property for years has been to have automotive equipment repaired by local concerns. The unions' present demands apparently are designed to change that, and to obtain such work for the employees they represent, regardless of the costs to Burlington.

System Steamfitters and System Electricians

63. In 1956-57 the Burlington constructed the Cicero classification yard near Chicago at a cost of approximately \$7,000,000, part of which was contracted. The magnitude of that project and the necessity for the contractor to have full control of the continuity of work to be performed, was unquestioned by the labor unions on the property, including the Sheet Metal Workers International Association which represents our System Steamfitters. This group of employees has always been maintained primarily for maintenance and minor installations, and at the time the Cicero yard was being constructed, consisted of only 10 employees.

64. On October 18, 1968, a claim was filed in behalf of System Steamfitters because similar work was contracted in connection with the construction of a classification yard at Kansas City, Missouri. The only difference between the Kansas City installation and the installation at the Cicero yard several years before was that in 1968 the 1964 Mediation

Agreement was in effect. In October, 1968, we had a total of 7 men in the System Steamfitter gang. The Burlington furnished the union considerable data concerning this project, as well as blueprints, and the Burlington apparently persuaded the union they could not support a claim for the pipe work under criteria specified in the 1964 agreement. Should the demands these unions are now making actually become an agreement, the Burlington might well be precluded from constructing additional modern yards of this type. We could not reasonably expect a large contractor to undertake such a project with the understanding that all progress would have to depend on the ability of railroad forces to accomplish such work as pipe work on schedule.

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

I. C Ethington

Subscribed and sworn to before me
this _____ day of _____, 1969.

Notary Public

AFFIDAVIT OF A. E. EGBERS ON BEHALF OF PLAINTIFF
WITH APPENDICES A, B AND D

DOCKET ITEM 12

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, et al.,

Defendants.

Civil Action No. 630-69

AFFIDAVIT OF A.E. EGBERS
ON BEHALF OF PLAINTIFF

A. E. Egbers, being of full age and being first duly sworn according to law, deposes and states as follows:

1. I am Assistant to the President of the plaintiff, Chicago, Burlington & Quincy Railroad Company (hereinafter "Burlington") and am in charge of the Burlington's Labor Relations and Employment Departments. My offices are at 547 West Jackson Boulevard, Chicago, Illinois. I have held my present position since December 1, 1965, but I have been employed by the Burlington for 27 years and have been in the Labor Relations Department of the Burlington since 1949.

2. As head of the Labor Relations Department of the Burlington, my responsibilities include overall supervision of its labor-management relations, and, with my labor relations staff officers, I negotiate and administer collective bargaining agreements between Burlington and the representatives of its employees, including the approximately 2800 shop employees represented by the defendants in this action. In my official capacity, I have supervised the Burlington's conduct of the dispute arising out of the defendants' March 25, 1968 demands that are attached as Exhibit B to the complaint in this action, and I have participated personally in most of the mediation and post-mediation sessions with the defendants.

3. The purpose of this affidavit is to set forth certain facts relating to the dispute alleged in the complaint in this action, supplementing

those allegations and the statements in the Affidavit of B.G. Upton filed in this action.

4. The negotiations and subsequent handling of this dispute from the date of service of the defendants' March 25, 1968 demands through March 12, 1969, are described in paragraphs 12 through 27 of the above-mentioned affidavit of Mr. Upton, who is one of the labor relations officers on my staff. I have read those paragraphs, and they accurately state the developments in the progression of the dispute, according to my personal knowledge and, in the case of those meetings that I did not attend, according to the reports made to me in the course of their duties by staff officers Upton, E.J. Conlin, and J.D. Dawson. In this affidavit, I do not propose to burden the record by repeating the matters stated by Mr. Upton. Rather, I propose only to discuss in more detail than did Mr. Upton the proposals made by the Burlington on January 20, 1969 (see Upton affidavit, para. 24) and on March 7, 1969 (see Upton affidavit, para. 26) in the hope of resolving this dispute, and, in addition, to supplement Mr. Upton's statements on the matter of national handling.

5. From the date that Burlington received the demands contained in the defendants' March 25 notice until the present, I have maintained to the defendants the position that Burlington is not required under the Railway Labor Act to bargain over those demands. During that same period, however, I have also maintained that we were willing to meet with the defendants and to make every effort to resolve the dispute. Mr. Upton has discussed the many proposals that we made to the defendants in an attempt to meet the objections that they raised to the existing national agreement of September 25, 1964, that governs both employee protection against the adverse effects of changes in operations of carriers (Article I) and the issue of contracting out work (Article II). Of those Burlington proposals, the most far-reaching in terms of increased

protection to employees and correspondingly increased restrictions upon Burlington are our proposals of January 20 and March 7. Those two proposals, which I discuss below, sought to approach the problem first from the approach of increasing the restrictions upon Burlington's contracting out work--the January 20 proposal--and, second from the approach of removing any significant possibility of loss of employment for existing employees as a result of contracting out work or, for that matter, as a result of other factors including declines in Burlington's business--the March 7 proposal.

6. A copy of the Burlington proposal of January 20 is attached to this affidavit as Appendix A. We had made previous proposals to the defendants to clarify parts of Article II of the 1964 agreement, but the January 20 proposal would have replaced Article II--the contracting out provisions of the 1964 agreement--in its entirety. The substantial changes in the character of the subcontracting provisions of the 1964 agreement that we suggested in our proposal may be seen by comparing the two, but I will note them briefly. First, our January 20 proposal applied to work within the classification of work rules "or work generally recognized as work of the crafts parties thereto as referred to therein" The quoted language is not contained in the 1964 agreement but is included in the defendants' March 25 notices. Second, our January 20 proposal eliminated one of the five criteria in the 1964 agreement under which subcontracting would be permitted--the unavailability of managerial skills on the property--and also narrowed and defined more precisely other criteria. For example, the 1964 agreement permitted subcontracting if the work "cannot be performed by the carrier except at a significantly greater cost" The January 20 proposal would permit subcontracting if "the cost of performing the work on the property would greatly exceed the cost" of subcontracting, and it also provided a formula for determining precisely when the cost of not subcontracting would

greatly exceed the cost of subcontracting. Third, as was the case with the cost factor, other standards based upon which subcontracting would be permitted were defined in the proposal in order to permit the defendants to examine each proposed subcontracting transaction in light of clearly-defined standards. One of the principal objections of the defendants to the criteria in the 1964 agreement was that their imprecision enabled carriers to enlarge upon them in proceedings before the Special Board, and the purpose of the definitions in our January 20 proposal was to meet that objection. Fourth, the defendants had complained that they did not receive sufficient data from Burlington in order to evaluate the propriety of certain transactions from their standpoint. Our January 20 proposal (Section 3) listed in detail the data that Burlington would be required to provide, and that data was precisely what the defendants had told us, in the mediation session of November 18, that they would require for each transaction. Fifth, as to the criterion in the 1964 agreement under which subcontracting would be permitted if skilled manpower was unavailable from active or furloughed employees, our January 20 proposal included a separate proposal, also attached as Appendix A to this affidavit, which was designed "to facilitate the utilization of furloughed shop craft employees throughout the [Burlington] system," and we proposed that our right to subcontract because of lack of skilled manpower would apply only where that skilled manpower could not be provided from the employees on the property or by transferring furloughed employees from other locations. There were other provisions in the January 20 proposal differing from those in the 1964 agreement, but the short of it is that we proposed to accept substantial restrictions upon our rights under the 1964 agreement. It should be noted, of course, that the 1964 agreement, itself, places restrictions upon the Burlington that we seek, in our counterproposals (Exhibit C to the complaint), to remove.

7. Our January 20 proposal, despite its major concessions to the defendants, was unacceptable to them in that it did not meet their demands for an absolute veto power over any subcontracting and the purchase of new equipment including railroad cars. Ultimately,

then, in our March 7 proposal, we tried to provide a plan for employee protection that would remove the problem that defendants have frequently stated to be the basis for their opposition to subcontracting-- the loss of employment or "erosion" of their crafts. That March 7 proposal is attached as Appendix B to this affidavit. Under the proposal, the protective provisions of Article I of the 1964 agreement would be cancelled and replaced by the much broader protections provided in the proposal. In turn, the protection provided in certain parts of the proposal would be superseded, upon the consummation of our merger with the Great Northern and Northern Pacific, by the still broader protection granted in the merger protective agreement for the employees. Finally, the protection of the proposal would apply not only to the existing employees on the date of the acceptance of the proposal but also to the furloughed employees at our Aurora Shops, approximately 70 men, who would be recalled to employment.

8. Basically, the March 7 proposal makes all existing shop employees and the furloughed employees at Aurora Shops "protected employees" who cannot be deprived of employment except in case of "resignation, death, retirement, dismissal for cause, or failure to retain or obtain a position available" in exercise of seniority rights. The proposal protects not only men but positions, in that it does not permit reductions of positions in any shop craft at a rate in excess of five percent per year. Burlington has an annual attrition rate of about fifteen percent per year--in other words, every year about fifteen percent of the positions are vacated through death, retirement, resignations, etc., so that, under our proposal we would be required to recall furloughed employees or hire new men to fill positions in excess of the five per cent level. In light of our March 7 proposal, then, the extent of any adverse effect upon an existing shop employee as a result of contracting out, or technological changes, or even declines in Burlington's business, would be

that he might be required, in order to maintain his protective rights, to move to another location. And, if that location was more than 30 normal route miles from his former location, he would be entitled to the benefits of Sections 10 and 11 of the Washington Job Protection Agreement (See Article I, sections 9 and 10, of the 1964 agreement), so that his moving expenses would be paid and he would be protected against loss from the sale of his home.

9. The March 7 Burlington proposal also dealt with one of the principal sources of complaint by the defendants under the application of the contracting out provisions of the 1964 agreement--the matter of repairing General Electric Locomotives. Until recently, almost all of Burlington's locomotives were made by the Electromotive Division of General Motors (EMD), but in 1964, 1965 and 1966 we acquired 34 locomotives made by the General Electric Company. The defendants challenged Burlington's right to have the traction motors of these GE locomotives sent out to GE for repairs, but Special Board 570, in Award No. 59, dated October 24, 1967, held that it was doubtful that such repairs came within the defendants' classification of work rules and that, in any event, the essential equipment for making the repairs on the property was unavailable. In Article II of our March 7 proposal, Burlington proposed to agree that repairs on GE traction motors and certain other parts, outside of the warranty period, would be regarded as within the classification of work rules and that Burlington would, within a one-year period acquire the necessary equipment to perform on GE locomotives the repair work currently being performed on EMD locomotives.

10. Our March 7 proposal met with no more interest from the defendants than our January 20 proposal. The defendants' immediate response was their March 8 proposal, quoted at paragraph 26 of Mr. Upton's affidavit, which maintained their consistent position throughout this dispute--no subcontracting and a veto on the purchase of new equipment. In short, no matter what concessions we

were willing to make--even when we proposed to remove the threat to employment that ostensibly has been the reason for their opposition to subcontracting--defendants simply would not budge from their insistence that they, not management, should determine the method of acquisition and repair of Burlington's equipment.

11. Mr. Upton's affidavit, at paragraphs 9a. and 9b., discusses the long-recognized custom and practice of "national handling" of various disputes in the railroad industry. In my experience, many of the agreements applicable to the Burlington and dealing both with rules and wages have been arrived at through national handling. Indeed, the 1964 agreement which governs the issues in dispute here was arrived at through national handling, and the 1936 Washington Job Protection Agreement, the protections of which were extended in the 1964 agreement to include the adverse effects of subcontracting, was also arrived at through national handling. Furthermore, the classification of work rules, which the defendants contend to govern Burlington's right to subcontract any work, were also arrived at on a national basis. The position of these defendants as to the importance of national handling of wage and rules disputes is illustrated by an excerpt from their presentation to the United States Railroad Labor Board in 1921 when they urged continuation of the national agreement of 1919 that, among other things, contained the classification of work rules for the respective crafts. At that time, they took the position that they were entitled to "recognition of the right to negotiate uniform conditions of employment on all roads" (Appendix C, p. 5) They sought and received that right in reaching the uniform agreement--the 1964 agreement--that now governs the issue of subcontracting, yet they now seek to wipe out that agreement only on the Burlington and substitute a veto over any subcontracting by Burlington.

12. In effect, the dispute arising out of the defendants' March 25, 1968 demands is merely a continuation of the dispute that began with the demands served nationally by defendants in 1962. Those demands (see Upton affidavit, Appendix B, pp. 23-24) are virtually identical to the March 25 demands served upon the Burlington. One significant addition is that they are now also demanding a veto on the acquisition of new equipment. Of course, defendants in the proceedings before Emergency Board 160 contended that they were not really seeking anything so far-reaching as the demands indicated on their face, and Emergency Board 160 recommended restrictions upon subcontracting that met the more limited demands stated by defendants before that Board. (See Upton affidavit, para. 8-9) But they now have returned with the same demands, made, according to my information and belief, only upon the Burlington and one other carrier, the Missouri Pacific. In my judgment, and based upon my experience, the defendants' purpose is clear. They recognized in the proceeding in Emergency Board 160 that they could not force the carriers nationally to accede to their unreasonable demands for a veto power over subcontracting, so they now seek to isolate one carrier--Burlington--and apply economic force to coerce it into agreement, after which they can use the Burlington agreement to apply pressure upon the Missouri Pacific and, subsequently, other railroads. In support of my judgment in this regard, I would like to point out two matters that came up in the course of this dispute. In early meetings, we approached the defendants with the suggestion that an agreement might be worked out on the Burlington that would terminate upon our merger, but they would not even discuss that possibility. In my view, the impending merger of Burlington with Great Northern and Northern Pacific is one of the main reasons that defendants picked Burlington as the target for their March 25 demands. If they are able to force Burlington to agree to their demands, they will then be in a position to seek application of that agreement to the merged lines. Further, in the

meetings I pointed out to defendants that their demands would impose a great competitive disadvantage upon Burlington, citing as an example our competition with the Chicago and North Western. Mr. Stenzinger, International Representative of the Machinists, replied that I need not worry about the Chicago and North Western because they would be after them for the same agreement. In short, the issue of contracting out is no less a national dispute now than it was in 1964, but the defendants have merely changed their tactics in an effort to win the national veto power sought in their national notices of 1962 by exerting pressure on individual carriers one at a time.

13. Even apart from the fact that this national issue has a history of national handling, the issue is now in national handling with these defendants in connection with other notices and counter-notices. On or about November 8, 1968 the defendants, with the exception of the Firemen and Oilers, served on most of the nation's carriers notices for changes in the existing collective bargaining agreements. On or about November 29, 1968, those carriers served counter-notices upon such defendants for concurrent handling, including a proposal to revise the 1964 national agreement to eliminate restrictions upon contracting out work, lease or purchase of equipment or parts, and unit exchange. The Burlington was among the carriers served with the November 8 notices, and it served the November 29 counter-notices. A copy of the latter is attached as Appendix D to this affidavit. The carriers and defendants agreed to national handling of the respective notices, and the first national conference on the respective notices was held in Washington this week. Thus, the issues in this dispute are currently being progressed through national handling

between most of the nation's carriers, including Burlington, and the defendants serving the November 8 notices.

A. E. Egbers
A. E. Egbers

District of Columbia) SS:

Subscribed and sworn to before
me this 20th day of March, 1969.

Elizabeth L. Mayo
Elizabeth L. Mayo, Notary Public

My Commission expires September 30, 1971

APPENDIX A
(11 pages)

1/20/69

12 copies to Mediators
Present 1:00 p.m.
for delivery to agents

CB&Q PROPOSAL
1/20/69

M E D I A T I O N A G R E E M E N T

CASE NO. A-8428

This Agreement made this _____ day of _____, 1969, by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railway Employees Department, AFL-CIO.

IT IS AGREED:

ARTICLE I - ABROGATION OF ARTICLE II - SUBCONTRACTING - OF MEDIATION AGREEMENT A-7030

As of the ^{effective} ~~signature date~~ date of this Agreement, Article II - Subcontracting - of National Mediation Agreement A-7030 dated September 25, 1964 between a majority of the nation's Class I railroads and their employees represented by the Shop Craft Organizations, to which the Carrier party hereto and its employees represented by System Federation No. 95, Railway Employees' Department, are parties, is hereby abrogated insofar as its application to the parties to this agreement. Disputes arising under Article II of the September 25, 1964 Agreement prior to its abrogation will be handled to a conclusion in accordance with the provisions of such Agreement.

ARTICLE II - RESTRICTIONS ON SUBCONTRACTING

Section I -

Work set forth in the classification of work rules of the Schedule Agreement effective October 1, 1953 between the parties to this agreement or work generally recognized as work of the crafts parties thereto as referred to therein will not be subcontracted except as hereinafter provided. If the classification of work rules cover repair of certain items and employees currently perform such repairs, the purchase of new equipment of the same type from a different manufacturer will not remove the repair of such items from the

classification of work rules, unless special machinery is needed to perform such work which the Carrier does not own. It is understood that the word "subcontracted" includes unit exchange (trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts) but does not include the purchase of new equipment or component parts. Repairs made to equipment under warranty by the manufacturer or seller thereof is not considered "subcontracting" and is not prohibited by this agreement. Repairs to leased equipment is likewise not considered "subcontracting" and is not prohibited by this agreement.

Section 2 -

Subcontracting of work referred to in Section 1 of this Article II will be permitted only under the following conditions:

(a) When the cost of performing the work on the property would greatly exceed the cost of having such work performed by a subcontractor. The following table will be used in determining whether or not the cost of performing the work on the property would "greatly exceed" the cost of having such work performed by a subcontractor:

Estimate of Labor Charge
by Contractor

Less than \$1,000
\$1,000 and less than \$5,000
\$5,000 and less than \$10,000
\$10,000 and less than \$50,000
\$50,000 and less than \$100,000
\$100,000 and over

Increased Cost if Work
Performed on Property

6% of contractor's estimated labor charge
5% of contractor's estimated labor charge
4% of contractor's estimated labor charge
3% of contractor's estimated labor charge
2% of contractor's estimated labor charge
1% of contractor's estimated labor charge

The estimate of labor charge by the contractor will be based on figures furnished at the time a bid is submitted by it.

The estimate of labor cost for performing the work on the property will be computed in the following manner:

No. of hours to perform work X rate of pay of
employees to be used + 75% (Shop Overhead) +
10% (Supervision) + 25.02% (Fringe Benefits).

NOTE: Percentage figures are based on percentages currently in effect and will be changed as fringe benefit costs increase or decrease.

A determination that the cost of performing work on the property would greatly exceed the cost of having it performed by a subcontractor will be made in accordance with the following example:

Estimated Labor Cost by Contractor		<u>\$4,600.00</u>
Estimate of No. of hours to perform work on property:		
Machinists	400 Hours @ 3.5994	\$1,439.76
Electricians	150 Hours @ 3.5994	539.91
Helpers	100 Hours @ 3.0037	300.37
		<u>\$2,280.04</u>
Shop Overhead (75%)		\$1,710.03
Supervision (10%)		228.00
Fringe Benefits (25.02%)		570.47
		<u>\$4,788.54</u>
Difference between labor charge by contractor and labor cost for performing work on property		\$ 188.54
Significantly greater cost from above table to perform work on property		\$ 230.00

Under this example, the work could not be subcontracted because the cost of performing it on the property would not "greatly exceed" the cost of having it performed by a subcontractor in application of the above table.

(b) In Emergency Situations. "Emergency" is defined to mean:

"An unforeseen combination of circumstances or the resulting state which calls for prompt or immediate action involving safety of the public, employes and Carrier's property or avoidance of unnecessary delay and expense to Carrier's operations. "

(c) Minor Repairs. Repairs requiring sixteen (16) man hours' or less to perform.

(d) Machinery and facilities necessary to perform the work is not available on the property. Machinery and facilities will be considered available on the property if the Carrier owns such machinery and facilities on the date of this agreement, and such machinery is of such capacity or design to enable qualified employes to efficiently perform the work. Disposition of

machinery or failure to replace machinery that becomes inoperative subsequent to the date of this agreement cannot be used as a reason for subcontracting work.

(e) If the work cannot be performed on the property without depriving the Carrier of the use of essential equipment. Except in emergency situations, the Carrier will not be considered deprived of essential equipment if the work can be performed on the property within 10 calendar days beyond the time in which the subcontractor could perform it.

(f) Skilled employees not available. If employees possessing the necessary skills to perform the work are not available on the property or cannot be made available by transferring furloughed employees from one location to another in accordance with CB&Q Labor Agreement _____ dated _____

Section 3 -

(a) If the carrier decides to subcontract work (except for minor repairs and in emergency situations) in accordance with this agreement, it will give the general chairman of the craft or crafts involved notice of its intention, which will include the reasons therefor, and will furnish the following data, where applicable, to the particular transaction:

(1) Sub-contractor's bid broken down into man hours, labor charges, shop overhead, material costs and specific work to be performed.

(2) Blueprints, drawings, sketches, specifications, manufacturer's model number and any other information which will properly describe or identify the job, equipment, parts, or units involved in the particular transaction.

(3) Purchase agreements containing warranties and guarantees, return exchange options or rights, reciprocal agreements with manufacturers, and other rail carriers dealing with leasing or exchange of locomotives, cars, equipment, communication and electrical equipment.

(4) Carrier's purchase orders with specifications and cost of labor and materials.

(5) Information relative to estimated completion date and actual date completed by Contractor.

(6) Invoices received from the subcontractor relative to the transaction.

(7) List of special machinery, tools, gauges and any other technical devices needed to perform the work involved in the transaction.

(b) If requested, the Carrier will also furnish the General Chairman of the craft or crafts involved the above data, where applicable, in transactions involving minor repairs and emergency situations where no advance notice is required.

(c) The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the Carrier's notice to subcontract work of any desire to discuss the involved transaction and a conference will be arranged to discuss such transaction within 10 days from the date the General Chairman or his representative notifies the Carrier of his desire to discuss the matter. If the parties are unable to reach an agreement at such conference the carrier may nevertheless proceed to subcontract the work and the organization may process the dispute to a conclusion as hereinafter provided.

(d) If the General Chairman or his designated representative requests data in transactions involving minor repairs and emergency situations where no advance notice is required, he will notify the Carrier within ten days from the postmarked date of the Carrier's letter furnishing such data of any desire to discuss the matter and a conference will be arranged within 10 days from such notification. Any dispute as to whether the transaction involved minor repairs or an emergency situation may be processed to a conclusion as hereinafter provided.

ARTICLE III - RESOLUTION OF DISPUTES

Section 1 -

Any dispute arising out of application of this Agreement or arising out of the application of Article 1 - Employee Protection - of Mediation Agreement A -7030 as related to Article 11 of this Agreement shall be handled in accordance with Section 2 of this Article III.

Any such dispute may be handled directly with the highest officer of the Carrier designated to handle disputes involving employees represented by the Organizations signatory to this Agreement. Any claim which is disallowed and is to be appealed, such appeal must be made within 60 days by instituting proceedings before the Special Board established by Section 2 of this Article III. Claims filed for wage loss on behalf of a named claimant arising out of an alleged violation of Article 11 of this Agreement shall be filed and progressed in accordance with the time limit on claims rules.

Section 2 -

(a) In accordance with Section 3 of the Railway Labor Act as amended, a Special Board of Adjustment (hereinafter referred to as the "Board") is hereby established for the purpose of adjusting and deciding disputes referred to in Section 1 of this Article III. The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act as amended, and are not subject to Article VI of Mediation Agreement A-7030.

(b) The Board shall consist of one member. The Carrier and the Organizations agree that _____ shall be the one member of the Board.

(c) The term appointment of _____ as the Board shall be for a period of three years following the date of this agreement. He will be eligible to serve for subsequent terms of two years each in the event the parties to this Agreement so agree. Otherwise, a successor shall be selected

for a succeeding two-year term as prescribed in paragraph (d) of this Agreement. The succeeding Board member shall serve for a two-year period unless the parties agree to additional terms.

(d) In the event of termination of the appointment of _____ as the Board member, for any reason, the parties shall meet within fifteen (15) days of the commencement of the vacancy and mutually agree upon a successor. Should the parties be unable to agree upon a successor of the Board within ten (10) days of the vacancy, the parties, or either of them, shall request the National Mediation Board to assign a new Board member who has had experience on the National Railroad Adjustment Board. Subsequent successors as members of the Board shall be agreed upon or selected as prescribed herein above.

(e) The compensation and expenses of the Board member shall be borne half by the Carrier and half by the Organizations.

(f) Any dispute referred to in Section 1 of this Article III, and not settled on the property, may be referred by any party to this Agreement to the Board for decision. It is understood that proceedings before this Board shall be considered as instituted when one party gives notice to the others of its invocation of the services of this Board in the particular dispute or disputes to be decided.

(g) When one party gives notice to the others of its invocation of the services of this Board, the Board, the Carrier and Interested Employee Representatives shall meet and begin hearings on the particular dispute or disputes to be decided within thirty (30) days of the giving of said notice. The Board shall meet and hold its hearings at such points as may be determined by the Carrier and Employee Representatives.

(h) The Board, Carrier and Employee Representatives shall establish the rules of procedure for itself, except as otherwise provided herein. The Board upon approval of Carrier and Employee Representatives, shall have the authority to employ secretarial and other assistance and incur such other

expenses as it deems necessary for the proper conduct of its business, such expenses to be borne half by the Carrier and half by the Organizations.

(i) The Board shall hold hearings on each dispute submitted to it. Due notice of such hearings shall be given to all the parties. At such hearings, the parties may be heard in person, by counsel, or by other representatives as they may select. The parties may present, either orally or in writing, statements of fact, supporting evidence and data and argument of their position with respect to each case being considered by the Board. The Board shall have authority to require the production of such additional evidence, either oral or written, as it may desire from either party. A written transcript of hearings held by this Board shall not be made.

(j) The Board shall make findings and render an award within thirty (30) days after the close of hearing of each dispute, with the exception of disputes that may be withdrawn. No dispute may be withdrawn after hearing thereon has begun except by mutual consent of the parties. Findings and award shall be in writing and copy shall be furnished all the parties. Such awards shall be final and binding upon all parties to the dispute. In case a dispute arises involving an interpretation of an award, the Board, upon request of either party, shall interpret the award in the light of the dispute.

ARTICLE IV - EFFECT OF THIS AGREEMENT

This Agreement is in full and final settlement of the dispute growing out of the Organizations' March 25, 1968 Notice and the Carrier's March 29, 1968 Notice served on the Organizations for concurrent handling therewith.

ARTICLE V - EFFECTIVE DATE

The provisions of this agreement shall become effective _____, 1969 and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Section 6 notices will not be initiated by any party to this Agreement covering subcontracting of work prior to January 1, 1971.

SIGNED AT CHICAGO, ILLINOIS, THIS _____ DAY OF _____
_____, 1969.

- - - - -

The above proposal by the Carrier is made in an effort to conclude negotiations in this dispute. If this proposal is not accepted by the Organizations, the Carrier reserves the right to further progress its March 29, 1968 proposals to a conclusion.

1/20/69

12 copies to Orgs

-10-

Mediating Records 1:00 p.m.
for delivery to Orgs.

CB&Q Proposal
1/20/69

CB&Q LABOR AGREEMENT NO. _____

MEMORANDUM OF AGREEMENT

This Agreement made this _____ day of _____, 1969 by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railway Employees Department, AFL-CIO.

IT IS AGREED:

To facilitate the utilization of furloughed shop craft employees throughout the Carrier's system, the following shall apply:

(a) System-wide rosters of furloughed employees will be maintained by crafts. Such rosters will contain the names of all furloughed employees, job classifications, seniority point and date furloughed.

(b) If the Carrier is unable to fill a position in a certain craft at a particular location without hiring a new employee, such vacancy may be offered to furloughed employees whose names appear on rosters made pursuant to paragraph (a) hereof.

(c) If there are no applications for the position from furloughed employees, the junior furloughed employee in the particular craft who holds seniority at the location nearest to such position will be required to accept the position or forfeit all seniority and employment rights.

(d) An employee who transfers to a new point of employment will acquire new seniority on the seniority roster to which transferred and will retain his seniority on the roster from which transferred.

(e) An employee who transfers to a new point of employment pursuant to this Agreement which is in excess of 35 normal route miles from his former work location, but which is not closer to his residence than his former work location, and as a result thereof moves his place of residence, will receive the benefits of Sections 10 and 11 of the Washington Job Protection Agreement

- 11 -
- 2 -

dated May 21, 1936.

(f) An employe transferring to a new point of employment pursuant to this Agreement, regardless of whether or not he is required to move his place of residence, shall receive the benefits contained in Sections 6 and 7 of the Washington Agreement.

(g) An employe who transfers to a new point of employment pursuant to this agreement will not be required to transfer back to his original point of employment so long as he can hold a regular assignment at his new work location. He may, however, return voluntarily to his original point of employment to accept a permanent vacancy, in which event he will no longer be entitled to the benefits provided by paragraph (f) hereof and will not receive the benefits provided in paragraph (e) hereof for such move.

(h) The provisions of this agreement shall become effective _____, 1969, and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

SIGNED AT CHICAGO, ILLINOIS, THIS _____ DAY OF _____, 1969.

APPENDIX B
(14 pages)

1007 224/1A
March 7, 1969

MEMORANDUM FOR THE NEGOTIATING COMMITTEE OF SHOP CRAFT ORGANIZATIONS
COMPRISING SYSTEM FEDERATION NO. 95:

You requested at our conference yesterday that we reduce to writing our oral proposal made to you on March 5, 1969 which was a new approach in an effort to resolve the dispute growing out of your March 25, 1968 Section 6 Notice and the Carrier's March 29, 1968 proposals for concurrent handling thereof. We informed you that we would give consideration to doing so.

The Carrier's proposal attached hereto is intended to be a new and different approach to resolution of this dispute and is made with the understanding that previous proposals by the Carrier handed you during progression of this dispute are hereby withdrawn.

It should also be understood that this proposal is made in an effort to conclude negotiations in this dispute, and should not be construed to mean that the Carrier has abandoned its March 29, 1968 Notice. If the attached proposal is not acceptable to the Organizations, the Carrier reserves the right to further progress its March 29, 1968 Notice to a conclusion.

A. E. Egbers
J. D. Dawson
B. G. Upton

Representing the CB&Q

3/7/69

A G R E E M E N T

5

This Agreement made this _____ day of March, 1969, by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railway Employees Department, AFL-CIO.

IT IS AGREED:

ARTICLE 1 - EMPLOYEE PROTECTION

Section 1 -

Article 1 - Employee Protection - of Mediation Agreement A-7030 dated September 25, 1964 is hereby cancelled.

Section 2 -

The Organizations, parties hereto, recognize the right of the Carrier to purchase new equipment and component parts; and that the Carrier has and may exercise the right to introduce technological and operational changes.

Section 3 -

The Carrier will maintain forces (i.e. positions) represented by each Organization signatory hereto in such a manner that reductions of positions below the established base as defined herein shall not exceed five percent (5%) per annum. For example, if the established base for a particular Organization is 100 positions, the Carrier will only be permitted to reduce positions of employees represented by such Organization during 1969 and each year thereafter by 5 per year.

The "established base" shall mean the total number of employees in each craft represented by the Organizations signatory hereto holding regularly assigned positions on the effective date of this Agreement and those employees at Aurora

Shops who are recalled and return to service pursuant to Section 4 of this Article 1.

Section 4 -

All employees at Aurora Shops represented by the Organizations signatory hereto who are not now working for the Carrier will be recalled within ten (10) days following the effective date of this Agreement and will be offered positions in the enlarged seniority district created under Section 5 of this Article 1. Provided such employees return to service within 10 days' from date of recall, they will be considered "protected employees" and entitled to the benefits set forth in Section 6 of this Article 1. It is understood, however, that furloughed employees at Aurora Shops who return to service in accordance with this Section might subsequently be required to change their point of employment in accordance with Section 6 of this Article 1.

Section 5 -

Employees represented by the Organizations signatory hereto holding seniority in a particular craft at Aurora Shops, Aurora-Eola Roundhouse, Eola Repair Track and Eola Reclamation Plant shall, on the effective date of this Agreement, have their seniority dovetailed onto one single roster for that craft. Thereafter, employees will be assigned to those facilities on the basis of the merged seniority roster.

Section 6 -

(a) Employees represented by the Organizations signatory hereto who hold regularly assigned positions on the effective date of this Agreement, or who return to service in accordance with Section 4 of this Article 1, will be considered "protected employees." "Protected employees" will not be deprived of employment except in case of resignation, death, retirement, dismissal for cause, or failure to retain or obtain a position available to him in the exercise of

his seniority rights. "Protected employees" who refuse available employment as hereinafter provided will not be entitled to the protective benefits of this Agreement during any period they are not available for work or during any period they are furloughed because of their unwillingness to accept employment in their craft in accordance with this Section 6.

(b) If a protected employee cannot hold a position at the point at which employed on the date of this Agreement, he may be offered an available position within his craft on Lines East or Lines West of this Carrier, dependent on the territory in which his home seniority rights is located.

(c) If a protected employee is offered and accepts employment at another location in accordance with paragraph (b) of this Section 6, and such location is in excess of ³⁰~~35~~ normal route miles from his former work location but which is not closer to his residence than his former work location, he will be entitled to the benefits of Sections 10 and 11 of the Washington Job Protection Agreement.

ARTICLE II - CLASSIFICATION OF WORK RULES

Section 1 -

Repair work on General Electric Locomotives, outside the warranty period, shall be considered within the classification of work rules to the same extent as work currently performed on EMD Locomotives. The Carrier will commence performing the following repair work on General Electric locomotives not under warranty on the effective date of this Agreement:

Main Generators
— Alternators

Traction Motors
— Trucks

Section 2 -

The Carrier will proceed to secure necessary equipment to perform all repair work it now currently performs on EMD locomotives, and will commence such repairs within one year from the effective date of this Agreement.

Repairs to General Electric locomotives outside the warranty period during the one-year period following the effective date of this Agreement (except for repairs to main generators, traction motors, alternators and trucks) may continue to be sub-contracted and such subcontracting will not be considered a violation of this Agreement or any other Agreement in effect between the parties hereto. The sub-contracting of repairs to General Electric locomotives following the one-year period referred to herein will be subject to Article II of Mediation Agreement A-7030 dated September 25, 1964.

ARTICLE III - CONFLICT WITH OTHER AGREEMENTS

Section 1 -

If there is any conflict between this Agreement and Mediation Agreement A-7030 dated September 25, 1964 or currently effective collective agreements between the parties signatory hereto, this Agreement will take precedence over such other Agreements.

Section 2 -

The provisions of Article I, Sections 3, 4 and 6, will be automatically cancelled upon consummation of the Burlington Northern merger.

ARTICLE IV - RESOLUTION OF DISPUTES

Section 1 -

Article VI of Mediation Agreement A-7030 is hereby amended to provide that the Shop Craft Special Board of Adjustment established thereunder will only have jurisdiction of disputes on this Carrier arising under Article II - Subcontracting of that Agreement.

Section 2 -

Any disputes arising under this Agreement shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

ARTICLE V - EFFECT OF THIS AGREEMENT

This Agreement is in full and final settlement of the dispute growing out of the Organizations, March 25, 1968 Notice and the Carrier's March 29, 1968 Notice served on the Organizations for concurrent handling therewith.

ARTICLE VI - EFFECTIVE DATE

The provisions of this Agreement shall become effective April 1, 1969, and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended. Section 6 notices will not be initiated by any party to this Agreement covering the subject matter of the notices disposed of by this Agreement or employee protection benefits prior to January 1, 1971.

3/7/69

3/7/69

Article I, Section 7

(a) Notwithstanding other provisions of this Article I, the Carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions is not performed.

Sixteen hours' advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency.

(b) Incumbents of positions abolished or employees furloughed as a result of the incumbents exercising their seniority in emergency situations outlined above will not be entitled to the protective benefits of this Article I during the period of such furlough.

7:00 am 22/3/69
March 7, 1969

MEMORANDUM FOR THE NEGOTIATING COMMITTEE OF SHOP CRAFT ORGANIZATIONS
COMPRISING SYSTEM FEDERATION NO. 95:

You requested at our conference yesterday that we reduce to writing our oral proposal made to you on March 5, 1969 which was a new approach in an effort to resolve the dispute growing out of your March 25, 1968 Section 6 Notice and the Carrier's March 29, 1968 proposals for concurrent handling thereof. We informed you that we would give consideration to doing so.

The Carrier's proposal attached hereto is intended to be a new and different approach to resolution of this dispute and is made with the understanding that previous proposals by the Carrier handed you during progression of this dispute are hereby withdrawn.

It should also be understood that this proposal is made in an effort to conclude negotiations in this dispute, and should not be construed to mean that the Carrier has abandoned its March 29, 1968 Notice. If the attached proposal is not acceptable to the Organizations, the Carrier reserves the right to further progress its March 29, 1968 Notice to a conclusion.

A. E. Egbers
J. D. Dawson
B. G. Upton

Representing the CB&Q

3/7/69

A G R E E M E N T

5

This Agreement made this _____ day of March, 1969, by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railway Employees Department, AFL-CIO.

IT IS AGREED:

ARTICLE 1 - EMPLOYEE PROTECTION

Section 1 -

Article 1 - Employee Protection - of Mediation Agreement A-7030 dated September 25, 1964 is hereby cancelled.

Section 2 -

The Organizations, parties hereto, recognize the right of the Carrier to purchase new equipment and component parts; and that the Carrier has and may exercise the right to introduce technological and operational changes.

Section 3 -

The Carrier will maintain forces (i.e. positions) represented by each Organization signatory hereto in such a manner that reductions of positions below the established base as defined herein shall not exceed five percent (5%) per annum. For example, if the established base for a particular Organization is 100 positions, the Carrier will only be permitted to reduce positions of employees represented by such Organization during 1969 and each year thereafter by 5 per year.

The "established base" shall mean the total number of employees in each craft represented by the Organizations signatory hereto holding regularly assigned positions on the effective date of this Agreement and those employees at Aurora

Shops who are recalled and return to service pursuant to Section 4 of this Article 1.

Section 4 -

All employees at Aurora Shops represented by the Organizations signatory hereto who are not now working for the Carrier will be recalled within ten (10) days following the effective date of this Agreement and will be offered positions in the enlarged seniority district created under Section 5 of this Article 1. Provided such employees return to service within 10 days' from date of recall, they will be considered "protected employees" and entitled to the benefits set forth in Section 6 of this Article 1. It is understood, however, that furloughed employees at Aurora Shops who return to service in accordance with this Section might subsequently be required to change their point of employment in accordance with Section 6 of this Article 1.

Section 5 -

Employees represented by the Organizations signatory hereto holding seniority in a particular craft at Aurora Shops, Aurora-Eola Roundhouse, Eola Repair Track and Eola Reclamation Plant shall, on the effective date of this Agreement, have their seniority dovetailed onto one single roster for that craft. Thereafter, employees will be assigned to those facilities on the basis of the merged seniority roster.

Section 6 -

(a) Employees represented by the Organizations signatory hereto who hold regularly assigned positions on the effective date of this Agreement, or who return to service in accordance with Section 4 of this Article 1, will be considered "protected employees." "Protected employees" will not be deprived of employment except in case of resignation, death, retirement, dismissal for cause, or failure to retain or obtain a position available to him in the exercise of

his seniority rights. "Protected employees" who refuse available employment as hereinafter provided will not be entitled to the protective benefits of this Agreement during any period they are not available for work or during any period they are furloughed because of their unwillingness to accept employment in their craft in accordance with this Section 6.

(b) If a protected employee cannot hold a position at the point at which employed on the date of this Agreement, he may be offered an available position within his craft on Lines East or Lines West of this Carrier, dependent on the territory in which his home seniority rights is located.

(c) If a protected employee is offered and accepts employment at another location in accordance with paragraph (b) of this Section 6, and such location is in excess of ⁶⁰35 normal route miles from his former work location but which is not closer to his residence than his former work location, he will be entitled to the benefits of Sections 10 and 11 of the Washington Job Protection Agreement.

ARTICLE II - CLASSIFICATION OF WORK RULES

Section 1 -

Repair work on General Electric Locomotives, outside the warranty period, shall be considered within the classification of work rules to the same extent as work currently performed on EMD Locomotives. The Carrier will commence performing the following repair work on General Electric locomotives not under warranty on the effective date of this Agreement:

Main Generators
-----Alternators

Traction Motors
-----Trucks

Section 2 -

The Carrier will proceed to secure necessary equipment to perform all repair work it now currently performs on EMD locomotives, and will commence such repairs within one year from the effective date of this Agreement.

Repairs to General Electric locomotives outside the warranty period during the one-year period following the effective date of this Agreement (except for repairs to main generators, traction motors, alternators and trucks) may continue to be sub-contracted and such subcontracting will not be considered a violation of this Agreement or any other Agreement in effect between the parties hereto. The sub-contracting of repairs to General Electric locomotives following the one-year period referred to herein will be subject to Article 11 of Mediation Agreement A-7030 dated September 25, 1964.

ARTICLE III - CONFLICT WITH OTHER AGREEMENTS

Section 1 -

If there is any conflict between this Agreement and Mediation Agreement A-7030 dated September 25, 1964 or currently effective collective agreements between the parties signatory hereto, this Agreement will take precedence over such other Agreements.

Section 2 -

The provisions of Article 1, Sections 3, 4 and 6, will be automatically cancelled upon consummation of the Burlington Northern merger.

ARTICLE IV - RESOLUTION OF DISPUTES

Section 1 -

Article VI of Mediation Agreement A-7030 is hereby amended to provide that the Shop Craft Special Board of Adjustment established thereunder will only have jurisdiction of disputes on this Carrier arising under Article 11 - Subcontracting - of that Agreement.

Section 2 -

Any disputes arising under this Agreement shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

ARTICLE V - EFFECT OF THIS AGREEMENT

This Agreement is in full and final settlement of the dispute growing out of the Organizations, March 25, 1968 Notice and the Carrier's March 29, 1968 Notice served on the Organizations for concurrent handling therewith.

ARTICLE VI - EFFECTIVE DATE

The provisions of this Agreement shall become effective April 1, 1969, and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended. Section 6 notices will not be initiated by any party to this Agreement covering the subject matter of the notices disposed of by this Agreement or employee protection benefits prior to January 1, 1971.

3/7/69

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Jm

Article I, Section 7

(a) Notwithstanding other provisions of this Article I, the Carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions is not performed. Sixteen hours' advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency.

(b) Incumbents of positions abolished or employees furloughed as a result of the incumbents exercising their seniority in emergency situations outlined above will not be entitled to the protective benefits of this Article I during the period of such furlough.

APPENDIX D
(6 pages)

BURLINGTON LINES

Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
Fort Worth and Denver Railway Company

A. E. EGGERS
Asst. to the President
G. M. YOUNG
Director of Labor Relations



LABOR RELATIONS AND EMPLOYMENT DEPARTMENTS

547 West Jackson Boulevard - Chicago, Illinois 60606

November 29, 1968
Shops 2106-68

C. J. MAHER
E. J. CONLIN
J. D. DAYSON
H. C. LOUCKS
B. G. UPTON
Staff Officers
J. GILLETTE
Supvr. of Employment
R. W. TODD
Personnel Officer

Mr. N. G. Robison
General Chairman
BRCA
Lincoln, Nebraska

Dear Sir:

This will acknowledge your undated letter received in this office November 27, 1968 post marked by the Postal Department November 25, 1968 serving notice under Section 6 of the Railway Labor Act to revise and supplement all rates of pay in effect on the date of the service of this notice in accordance with the proposals set forth in "Appendix" attached thereto, such provisions to be effective January 1, 1969.

The General Chairmen of the IAMAW, IBEW, SM/IA, and the IB/ISSB/F&S have served similar notices on this Carrier and in view of the fact that the subject matter of their notices is similar with your notice, it is my desire that the initial conference to discuss your notice be held jointly with the above organizations at the time we have already scheduled for discussion of the notices they served. This joint conference will be held in my office at 547 West Jackson Boulevard, Chicago, Illinois at 10:00 A.M. on Thursday, December 5, 1968.

In acknowledging the letters of the General Chairmen of the four organizations who had served these notices prior to your notice, the Carrier reserved the right to take such position as it would determine to be proper concerning the propriety of the organization's proposals and to serve such proposals as we would consider appropriate for concurrent handling with your proposals and that right is hereby also reserved. The Carrier's proposals are hereby attached and are identified as attachment "A" (Shop Crafts).

Yours truly,

(Signed) A. E. EGGERS

cc: Mr. G. R. DeHague - General Chairman - IAMAW - Burlington, Iowa
Mr. E. J. Hayes - General Chairman - SM/IA - Aurora, Illinois
Mr. W. J. Peck - General Chairman - IBEW - St. Paul, Minnesota
Mr. A. L. Kohn - General Chairman - IB/ISSB/F&S - Milwaukee, Wisconsin

BURLINGTON LINES

Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
Fort Worth and Denver Railway Company

A. E. EGBERS
Asst. to the President
G. M. YOUNG
Director of Labor Relations



LABOR RELATIONS AND EMPLOYMENT DEPARTMENTS

547 West Jackson Boulevard - Chicago, Illinois 60606

November 23, 1968
Shops 2166-63

C. J. MAHER
E. J. CONLIN
J. D. DAYSON
H. C. LOUCKS
B. G. UPTON
Staff Officers
J. GILLETTE
Supv. of Employment
R. E. TODD
Personnel Officer

Mr. G. R. Follague
General Chairman, IAWW
Burlington, Iowa

Mr. E. J. Hayes
General Chairman, SMRA
Aurora, Illinois

Mr. W. J. Peck
General Chairman, ISAW
St. Paul, Minnesota

Mr. A. L. Kohn
General Chairman, ISBISBFCW
Milwaukee, Wisconsin

Gentlemen:

In my letter to you on November 15, 1968 acknowledging the notice dated November 8, 1968 which you served under Section 6 of the Railway Labor Act to revise and supplement all existing agreements as set forth in your letter and attached notice, I stated that the Carrier would serve such proposals as we would consider appropriate for concurrent handling with your proposals.

The Carrier's proposals are hereby attached, identified as attachment "A" (Shop Crafts) to be handled concurrently with your proposals.

Yours truly,

(Signed) A. E. EGBERS

bcc: Mr. J. F. Griffin - Administration Secretary - National Railway Labor Conference - Washington, D.C.

This refers to your circular 520-1 dated November 26, 1968.

A. E. Egbers

ATTACHMENT "A"
(Shop Crafts)

1. FORTY-HOUR WORK WEEK RULES

A. Eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to the forty-hour work week for regularly assigned employees which are in conflict with the rule set forth in Paragraph B.

B. Establish a rule to provide that:

1. The normal work week of regularly assigned employees shall be forty hours consisting of five days of eight hours each, with any two consecutive or nonconsecutive days off in each seven. Such work weeks may be staggered in accordance with the carrier's operational requirements.

2. Regular relief assignments may include different starting times, duties and work locations.

3. Nothing in this rule shall constitute a guarantee of any number of hours or days of work or pay.

4. Work performed by a regularly assigned employee on either or both of his assigned rest days shall be paid for at the straight time rates, unless the work performed on either of the assigned rest days would require him to work more than 40 straight time hours in the work week, in which event the work performed on either of his rest days in excess of 40 straight time hours in the work week shall be paid for at the rate of time and one-half.

5. Any overtime worked by the employee will be computed into straight time hours and be used for purposes of determining when he has completed his forty-hour work week but not for the purpose of determining when the time and one-half rate is applicable.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

2. FORCE REDUCTIONS

Establish a rule or amend existing rules to provide that no advance notice shall be necessary to abolish positions or make force reductions.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

3. MONETARY CLAIMS

Establish a rule to provide that no monetary claim based on the failure of the carrier to use an employee to perform work shall be valid unless the claimant

was the employee contractually entitled to perform the work and was available and qualified to do so, and no monetary award based on such a claim shall exceed the equivalent of the time actually required to perform the claimed work on a minute basis at the straight time rate, less amounts earned in any capacity in other railroad employment or outside employment, and less any amounts received as unemployment compensation.

Existing rules, agreement, interpretations or practices, however established, which provide for penalty payments for failure to use an employee contractually entitled to perform work shall be modified to conform with the foregoing, and where there is no rule, agreement, interpretation or practice providing for penalty pay, none shall be established by this rule.

All agreements, rules, regulations, interpretations and practices, however, established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

4. ELIMINATE STARTING TIME RULE

Eliminate all starting time and uniform commencing and quitting time rules, regulations, interpretations and practices, however established, and substitute in lieu thereof the following:

"All starting time, change in starting time and uniform starting and quitting time rules, regulations, interpretations or practices, however established, which prevent or restrict carrier from fixing or changing the starting time of employees, individually or as groups, are eliminated. Carrier may, without restriction, fix or change the starting time of all employees."

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

5. WRECKER CREWS AND EQUIPMENT

Management shall have the unrestricted right to determine the composition of wreck crews and the number and class to be called for wrecks. When called, at management's discretion, they shall be despatched within yard limits or outside yard limits to the wreck by whatever means the carrier deems feasible and returned in like manner. The equipment needed may be transported separately at a time and by whatever means desired by carrier. The use of any cranes, including wrecker cranes, and exchange of cranes between carriers, shall be without penalty to carrier. All waiting and traveling while in wrecker service shall be paid for at straight time rate.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

6. CLASSIFICATION OF WORK

All agreements, rules, regulations, interpretations and practices, however established, governing the classification of work of mechanics, helpers and apprentices shall be merged into three classification of work rules. The first rule shall govern the work of all mechanics, the second the work of all helpers, and the third the work of all apprentices. Thereafter any work covered by such a consolidated rule may be assigned to and performed by any employee of the class to which the rule is applicable irrespective of craft.

The number of mechanics, helpers and apprentices shall be determined as nearly as practicable by the ratio which exists in each seniority district among these crafts on the effective date of these rules.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

7. REVISION OF SEPTEMBER 25, 1964 AGREEMENT

Eliminate all agreements, rules, regulations, interpretations and practices however established which in any way handicap or interfere with the carriers' right to:

1. Contract out work;
2. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;
3. Trade-in or repurchase of equipment or unit exchange.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

8. TRANSFER OF EMPLOYEES

Establish a rule, or amend existing rules, to provide that management shall have the unrestricted right to transfer employees from one seniority point and/or district to another in order to meet carrier's service requirements.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

9. FILLING OF TEMPORARY VACANCIES OR AUGMENTATION OF FORCE

Establish a rule or amend existing rules to permit the filling of temporary vacancies or augmenting of force without restriction. This to include the employment of temporary personnel or the use of furloughed employees most readily available without necessity of following seniority roster.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

10. DISCIPLINE AND INVESTIGATION

Amend all existing rules, agreements, interpretations or practices, however established, dealing with discipline and investigation in such manner so as to make the following effective:

If it is found that an employee has been unjustly suspended or dismissed from service, such employee shall be reinstated with his seniority rights unimpaired and be compensated for wage loss, if any, suffered by him resulting from said suspension or dismissal less any amount earned, or which could have been earned by the exercise of reasonable diligence, during such period of suspension or dismissal.

All agreements, rules, regulations, interpretations or practices, however established, which conflict with the above shall be eliminated except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

11. ASSIGNMENT AND USE OF EMPLOYEES

The Carrier shall not be required to work an employee if working him would entail payment to him of more than the straight time rate, and use of another person in his place shall not be basis for claims of an employee not used.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the Carrier to be more favorable may be retained.

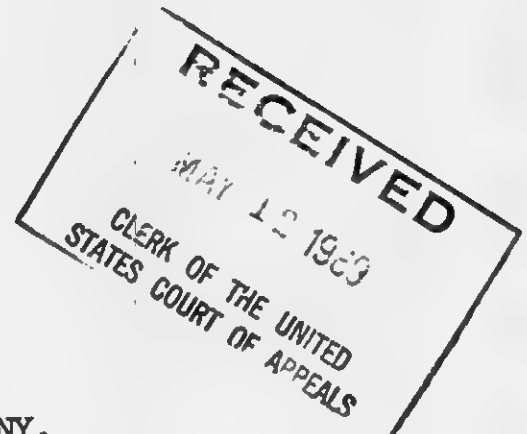
12. CHANGING EMPLOYEES FROM ONE SHIFT TO ANOTHER

Establish a rule to give management the unrestricted right to change employees from one shift to another at straight time rate.

All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations or practices considered by the carrier to be more favorable may be retained.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CASES NOS. 22966 and 22993



CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Appellee,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
ET AL.,

Appellants.

Appeals From A Judgment Of The United States District Court
For The District Of Columbia

JOINT APPENDIX
VOLUME NO. 2

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 12 1969

Nathan J. Paulson
CLERK

SUPPLEMENTAL AFFIDAVIT OF A. E. EGBERS ON BEHALF
OF PLAINTIFF WITH APPENDICES A AND B

DOCKET ITEM 13

13

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

Civil Action No. 630-69

RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, et al.,

Defendants.

SUPPLEMENTAL AFFIDAVIT OF A.E. EGBERS
ON BEHALF OF PLAINTIFF

A. E. Egbers, being first duly sworn according to law, deposes
and states as follows:

1. I am in charge of the Burlington's Labor Relations and
Employment Departments and am the same A. E. Egbers who executed an affidavit
on behalf of plaintiff in this action on March 20, 1969.

2. The purpose of this supplemental affidavit is to respond to
certain of the statements contained in the joint affidavit, dated March 25,
1969, and executed by representatives of each of the defendants in this action,
to which I will refer as "defendants' affidavit." Certain other statements
in the defendants' affidavit are the subject of the supplemental affidavit
of I. C. Ethington, Burlington's Vice President--Operations, which is being
filed contemporaneously with this supplemental affidavit.

3. The first area covered by defendants' affidavit that I
would like to discuss deals with the background of and Burlington's experience
under the existing national agreement of September 25, 1964 (Exhibit A to
the complaint in this action), to which the Burlington and the defendants are
parties. As my prior affidavit and that of my staff officer, Mr. Upton,

have stated, that agreement imposes substantial restrictions upon the management prerogatives of the Burlington and the other carriers to contract out work covered by the classification of work rules of the defendant shop unions. The restrictions imposed by the 1964 agreement were not intended to prohibit the contracting out of work covered by the classification of work rules, however, but rather were intended to permit the employees to challenge proposed transactions and to impose upon the carriers, when challenged, the obligation of justifying their management decisions upon the basis of the criteria contained in Article II, section 1, of the agreement (see defendants' affidavit, para. 6). Those criteria are virtually identical to the criteria recommended by Emergency Board No. 160 (see defendants' affidavit, para. 5), and the formulation of such criteria under which the propriety of contracting out could be determined was one of the principal aims of the defendants in the prior round of this contracting out dispute, according to the defendants' representations to Emergency Board 160 (see Affidavit of B. G. Upton on Behalf of Plaintiff, at para. 8).

4. The defendants' affidavit states that the existing agreement has not "prevented the continued erosion in employment of shopcraft employees, particularly on the Burlington," (defendants' affidavit, para.8) and it refers to the decline in employment of shop employees and to certain alleged "actions and practices" of Burlington under the 1964 agreement as establishing that we have not applied the agreement in good faith. (defendants' affidavit, para. 8 and 9) The defendants' affidavit, in discussing the declines in number of shop employees during the 1964-68 period, as well as during the period referred to by Emergency Board 160--1945-1962--does not mention that the shop employee decline in both periods is not significantly greater than the decline in number of all non-operating employees in both periods. Between 1945-62, Board 160 found a 59.4% decrease in shop employees

and 57.4% decrease in all non-operating employees on a national basis. (See Upton affidavit, App. 5, p. 5). The defendants' affidavit (at para. 7) states that, between September 1964 and September 1968, there was a decline of approximately 27% in the number of shop employees on the Burlington (defendants' affidavit, para. 7), but the decline in that same period for all non-operating employees on the Burlington was more than 23%. My point is that, declines in number of shop employees may have little or nothing to do with the question of contracting out of work.

5. Thus, it is important to place in proper perspective the figures showing a decline of 1152 Burlington Shop employees between 1964 and 1968. In the first place, most of the decline resulted from attrition -- in other words, as employees filling unnecessary jobs retired or resigned they simply were not replaced. Of course, the 1964 agreement includes broad protection for employees adversely affected. From the effective date of the September 25, 1964 agreement to the present time, the Burlington has made protection payments in excess of \$550,000 to employees who have been adversely affected. As stated in paragraph 8 of my previous affidavit, the normal natural attrition rate of shop employees on the Burlington is approximately 15% per year due to deaths, retirements, resignations, etc. At this attrition rate, during the four year period in question approximately 2400 shop employees left Burlington's service or more than twice the number of reduction in positions during the same period. The vast majority of positions eliminated had nothing to do with subcontracting of work but were eliminated as a result of management decisions in other areas which are entirely beyond the scope of the contracting out provisions of the 1964 agreement. These areas are as follows:

a. Centralized Maintenance. Work done at numerous small maintenance facilities dispersed over the system was moved to larger more centralized maintenance points.

b. Modernization. Large capital investments have been made in modernizing facilities and tools at Lincoln and West Burlington locomotive shops and Havelock freight car shops. Also four new "one spot" freight car repair shops were built at Chicago, Galesburg, Kansas City, and Lincoln.

c. Retirement of Passenger Equipment. As a result of passenger train discontinuances 24 passenger locomotives and 294 passenger cars have been retired.

d. Motive Power Replacement Program. Systematic replacement of obsolete motive power with new locomotives less costly to maintain has been progressed during this period.

e. Work Measurement Standards. Modern industrial engineering concepts used in other industries were introduced in locomotive and car maintenance operations.

6. Defendants' affidavit continually repeats its broad, general assertions that Burlington has taken the position that it will not honor the 1964 agreement and that it has applied that agreement in bad faith. (see defendants' affidavit at para. 8, 9, 12, 13, 14) The only example given by defendants relates to the repair of components of GE locomotives, as to which defendants contend that Burlington has shown a "wholesale disregard" for the requirements of the 1964 agreement and a disregard of the "public interest found by Presidential Emergency Board No. 160" (defendants' affidavit, para. 8) Defendants' affidavit is quite obscure in its allegations, but what the affidavit must be saying is that we have, in a number of instances since the effective date of the 1964 agreement, had work performed by persons other than shop employees. That is certainly the case, although the Burlington now, as the defendants recognized to be the case in 1964, contracts out less work than do many of the nation's carriers (see paragraph 12, infra.) What the defendants' affidavit does not state is that, if Burlington is in bad faith in its application of the 1964 agreement, that

bad faith is shared and encouraged by the disinterested parties who serve on the special board of adjustment created under the 1964 agreement. The defendants have progressed to that board--Special Board 570--16 cases that they have alleged to be covered by Article II of the 1964 agreement, the contracting out provisions. Of those 16 cases, the Board has ruled in eight that Article II was not applicable at all, has ruled in 5 more that Article II was not violated by Burlington and has ruled in only three that Burlington subcontracted in transactions that it should not have. In short, defendants' complaint really is that they have been unable to convince neutrals to interpret the 1964 agreement in a fashion sufficiently restrictive to satisfy their unreasonable positions. The example of the GE locomotives is illustrative. While the defendants' affidavit states that Burlington will not "honor the agreement of 1964 with respect to such equipment," (see para. 8) the fact is that Special Board 570 has held that work on GE traction motors is not within the defendants' classification of work rules and, in any event, could not be performed by Burlington's employees because of the unavailability of the necessary equipment. I referred to the Board's decision in my prior affidavit in this action, but I now attach a copy of that decision--award No. 59--as Appendix A to this supplemental affidavit. There simply is no basis for the defendants to contend that we will not honor the 1964 agreement with respect to this GE equipment, since the board created under the agreement to resolve disputes has held clearly that Burlington has the right under the agreement to have repairs on such equipment contracted out. Moreover, as I explained in my prior affidavit at paragraph 9, Burlington made a written proposal to defendants that, despite the clear ruling of Board 570, we would be prepared to enter an agreement with defendants in which we would accept that repairs to GE locomotives were within their classification of work rules and we would make the substantial capital expenditures necessary to acquire equipment so that repairs on GE locomotives could be made by Burlington's shop employees.

7. The defendants' affidavit contends that Burlington's alleged violations of the 1964 agreement were acknowledged by me in my letter of November 19, 1968, to Burlington operating personnel and in subsequent conferences with defendants. (see defendants' affidavit, at para. 8, 55, 59) In fact, after the defendants repeatedly contended in conferences that we had not given the required notice of proposed transactions under the 1964 agreement, I had our people examine the transactions and determined that there were a few in which advance notice was not given but might appropriately have been given to defendants. I so advised the operating departments of Burlington in my letter of November 19 and urged them to be particularly careful in furnishing to my department information as to contemplated transactions. I did not at any time state to the defendants that Burlington's alleged abuses of the agreement were repeated or prevalent, and I have no basis for believing that to be the case. Again, I note that the defendants allegations are in broad generalities, with no specific examples of these alleged abuses. The fact of the matter is that the defendants simply are not willing to recognize that the 1964 agreement means what it says--that it applies only to work within the classification of work rules, excluding, for example, GE locomotive equipment, and that advance notice is not required of minor transactions. Finally, in order to complete the record in connection with defendants' allegations of Burlington's failure to provide proper notice to defendants, I am attaching as Appendix B to this supplemental affidavit the February 24, 1969 response of Burlington's President, W. J. Quinn, to the defendants' letter of February 18, 1969 (Appendix N to defendants' affidavit).

8. Defendants' affidavit states that neither the March 25, 1968 demands, nor the January 17, 1969 proposal, nor the March 8, 1969 proposal of the defendants was intended to prohibit subcontracting by

Burlington (defendants' affidavit, para. 12, 53, 65). Again, it is significant that the defendants' disclaimers are brief and general. They do not discuss in any detail the language of their proposals or the effect of that language, as discussed in the Upton affidavit. The defendants' March 25 notices and their subsequent proposals are included in the record in this action as Exhibit B to the complaint, as Appendices D and E to the Upton affidavit, and as part of paragraph 26 of the Upton affidavit. Those proposals include the initial position of defendants in this dispute and the position of the defendants almost a year later--four days before the Burlington filed the complaint in this action. Certainly the language of all of the defendants' proposals makes it clear that they sought--as they explained in our conferences--to eliminate the criteria of the 1964 agreement under which contracting out could be justified and to stop Burlington from contracting out. Their final word on the matter--the March 8 proposal--was clear: "The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted." (see Upton affidavit, para. 26) In none of the defendants proposals did they include exceptions, and they insisted upon eliminating the criteria in the 1964 agreement that they had told Emergency Board 160 they wanted. The only point that defendants' affidavit makes as a basis for saying that the proposals were not really to prohibit all subcontracting is that the proposals, including the March 25, 1968 notices, included the provision for arbitration of disputes. The only problem is that, under either the defendants' March 25 notices or its final proposal there would be little or nothing for the Special Board to arbitrate. Burlington would be required to agree that the criteria under which contracting out could be justified would be eliminated from the agreement, so that we could not rely upon them.

The function of an arbitration board is to decide disputes under an agreement, so that the only justification we could present for contracting out would be that the work was not covered by the classification of work rules. As to anything within those rules, we would have agreed that the work "will not be contracted." Thus, the defendants' reference to the availability of arbitration is virtually meaningless.

9. In my prior affidavit and in the affidavit of Mr. Upton, we have discussed the proposals made by Burlington in an effort to resolve this dispute. The defendants' affidavit attempts to characterize our proposals as attempts to weaken or water-down the existing agreement or to give Burlington new rights. (see, e.g., defendants' affidavit at para. 39, 54, 64). I need not discuss in detail our proposals at this point, since the two latest are attached to my prior affidavit and I explained them in that affidavit. There simply is no basis for the defendants to assert that those proposals represent anything other than what they clearly appear to be--major concessions offered by the Burlington in the areas of further restrictions upon our rights to contract out and major additions to the employment security of our shop employees. I would like to note, however, that in this area as in others the defendants merely make broad statements. They do not say how our proposals would weaken the existing agreement or add to our rights any more than they say how we could possibly justify to an arbitrator contracting out work if we signed an agreement embodying their demands. Further, I would like to comment briefly upon the defendants' characterization of our March 7 proposal in paragraph 64 of their affidavit. The affidavit states, among other things, that the proposal sought "the recognition by the employees of an absolute right of the carrier to purchase any new equipment and component parts" and "an absolute right of the carrier to introduce technical and operational changes" As is apparent from reading our proposal and from reading the 1964 agreement, we

sought only a continuation of our rights under that agreement and prior thereto to make such changes and to purchase new equipment and component parts, and in exchange for that continuation of our rights we offered not only increased protection for existing employees but also the recall of furloughed employees at the Aurora shops and the recognition that repairs on GE equipment--which Special Board 570 held was not within the classification of work rules of defendants--would be included within those rules.

10. The defendants also state with reference to our March 7 proposal and with reference to previous proposals that we would remove from Special Board 570 certain disputes under the agreement. As to the March 7 proposal, they say (in para. 64) that we proposed that Board 570 would handle disputes only under Article III of the 1964 agreement. That is simply not true, as the proposal shows on its face (see defendants' affidavit, Appendix O). What we proposed was that Board 570 would have jurisdiction over disputes under Article II--the subcontracting provisions--of the 1964 agreement which we were prepared to have continued in effect, but to remove the Board's jurisdiction under Article I. Similarly in our January 20 proposal, we proposed to remove Board 570's jurisdiction over Article II and over certain disputes under Article I of the 1964 agreement. The reasons for those proposals were explained in detail to the defendants, and there is no basis for the statement at para. 46 of the defendants' affidavit that we proposed "to tear the whole agreement apart and eliminate the special procedures for settlement of disputes." Our position was that when we proposed on the Burlington to alter substantially Article II of the 1964 national agreement it would no longer be possible to have the Board established under that national agreement decide disputes under the amended Article. Similarly, when we proposed to alter substantially Article I it would be necessary to remove from Special Board 570 disputes under that amended Article. Special Board 570 is a creature of the 1964 national agreement, and the carrier parties to that agreement agreed to have it established to decide disputes under that national agreement. Burlington has no power to bind most of the nation's carriers to permit a Board created under a national agreement which would continue in effect as to them to decide

disputes under a substantially different agreement applying only to Burlington.

11. There are a number of inaccurate and unwarranted statements in the defendants' affidavit that are not, in my judgment, of sufficient importance to contradict in this supplemental affidavit. There are two points that I will discuss briefly, however:

a) The defendants state that Burlington stalled negotiations and that I did not attend some of the earlier meetings but rather sent my staff officers who were not authorized "to enter upon serious negotiations." (defendants' affidavit at para. (17)) There is no basis for the allegation that my staff officers lacked full authority, as I advised the defendants during the meetings, and the negotiations in this dispute were conducted as expeditiously as possible consistent with the demands upon my department in our dealings with the 18 organizations representing our employees.

b) The defendants refer to the proviso in our proposal of November 18 in which we reserved the right to continue to process our March 29, 1968 counterproposals in the event that defendants did not accept the November 18 proposal, and they state that we thus "set forth the first threat of self-help to accomplish" our purposes in the dispute (defendants' affidavit at para. (44)). That statement is curious in that defendants admit that they circulated a strike ballot on June 29, 1968, more than 4 months prior to our November 18 proposal (defendants' affidavit, at para. (9)), but more importantly, the defendants' characterization of our proviso as a "threat of self-help" can only be described as preposterous. The representatives of defendants who executed defendants' affidavit are experienced negotiators, and they are well aware of the common practice of parties in negotiations to make offers to resolve disputes with provisos that, in the event the other party does not accept the offer, the party making it has not waived the right to revert to a previous position. That is all that we did in the proviso to our November 18 proposal.

12. In closing this supplemental affidavit, I would like to put into proper perspective the relative position of the Burlington as among the nation's carriers on the issue of contracting out work. The defendants' affidavit seeks to give the impression that the Burlington contracts out on a widespread basis and that it is that factor that caused the defendants to serve their March 25, 1968 notices upon Burlington but not upon the many other carriers who are parties to the 1964 national agreement. (see defendants' affidavit at para. 7 and 9) The status of the Burlington on the issue of contracting out was testified to in 1964 before Emergency Board 160 by Winfield Homer, a witness for defendants in that proceeding. Mr. Homer conducted a survey of defendants' general chairmen on a large number of railroads and found that some contracted out no work, some contracted out a little work, and some contracted out a great deal of work. As to Burlington, he testified that "four of the general chairman on that carrier reported a little contracting out. In general, there was not a great deal of contracting out on the Burlington." Transcript of proceedings in Emergency Bd. 160, May 7, 1964, p. 1007. Since 1964, Burlington has continued to contract out some work, though not as much as we would if we were not restricted by the 1964 agreement. As to the work that we have contracted out, in most of the instances in which the defendants challenged us, the Special Board determined that our management decisions were proper. In my opinion, however, the Burlington in 1968 is in much the same position as in 1964 compared with other carriers. We contract out more work than some but substantially less than most carriers.

A. E. Egbers
A. E. Egbers

District of Columbia) SS

Subscribed and sworn to before me
this 28th day of March, 1969.

Elizabeth L. Mayo

Elizabeth L. Mayo
Notary Public

S.B.A. No: 570
Award No. 59
Case No. 82

Special Board of Adjustment No. 570

Established Under
Agreement of September 25, 1964

Chicago, Illinois - October 24, 1967

PARTIES
TO
DISPUTE:

System Federation No. 95
Railway Employees' Department
A.F.L. - C.I.O. - Machinists
and
Chicago, Burlington & Quincy Railroad Company

STATEMENT
OF CLAIM:

That the Chicago, Burlington and Quincy Railroad Company, violated Article II of the September 25, 1964 Agreement when it sent traction motors off its property to the General Electric Company, Erie, Pennsylvania, for repairs, therefore, Machinists H. Henry and J. L. Sink be compensated equally for the same number of hours work of the Machinist Craft performed and charged for by the outside concern.

FINDINGS:

The Employees contend: (1) that the rebuilding and repairing of traction motors is within their classification of Work Rule 45, and that these unit exchanges therefore come within the provisions of Article II of the Mediation Agreement of September 25, 1964; (2) that the Carrier's diesel repair shop at Burlington, Iowa was properly equipped and manned for the complete rebuilding of diesel units; and (3) that each of the two Claimants should be paid for one-half of the machinist man-hours performed by the General Electric Company.

The Carrier's position is (1) that the rebuilding of these 5-GE-752-E traction motors is not work included in the Employees' classification of work rules, and therefore does not come within Article II of the Mediation Agreement; (2) that the carrier has neither the equipment nor the manpower to perform the work; and (3) that in any event the Claimants were fully employed on regular assignments during the period in question, and therefore lost no wages or other benefits.

Article II of the Mediation Agreement of September 25, 1964 provides as follows:

"ARTICLE II - SUBCONTRACTING

"The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II."

Rule 45 of the Current Agreement is as follows:

"RULE 45 -- CLASSIFICATION OF WORK

"Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power) pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle wheel and tire turning and boring, engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work."

The claim was made on the property on May 29, 1966, and denied on June 9, 1966, at which times three model 5-GE-752-E traction motors had been sent to the General Electric Company on a unit exchange basis. On March 1, 1967 notice was given of the submission of the claim to this Special Board. Meantime during 1966 seven more such traction motors had been sent out on the same basis, and the presentation here has been as if all ten motors had been involved in the claim on the property.

For twenty years or more, the Carrier purchased no General Electric locomotive units or traction motors, although it still has some old GE equipment in use in switching operations. In 1964 it ordered and received six GE U-25-B locomotives, each with four model 5-GE-752-E traction motors; in 1965 twelve General Electric U-25-C locomotives, each with six such traction motors; and in 1966, sixteen General Electric U-28-C locomotives, each with six such traction motors. Eleven spare traction motors also were purchased. This made a total of 203 traction motors of that model, all covered by a two year or 250,000 mile warranty; of the three sent in before the claim, two were beyond the warranty and six within it.

The warranty provided as follows:

"The Company warrants to the Purchaser that each locomotive manufactured or rebuilt by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the contract. * * * If it appears within two (2) years from the date of shipment by the Company, or within 250,000 miles of operation, whichever event shall first occur, that the locomotive delivered hereunder does not meet the warranties, specified above, and the Purchaser notifies the Company promptly, the Company, after verification as to condition and usage, shall correct any defect including nonconformance with the specifi-

cations, at its option, either by repairing any defective part or parts made available to the Company, or by making available at the Company's plant or warehouse, a repaired or replacement part."

While the warranty of course did not cover wear, or any defects except as stated, the Carrier naturally desired to take the fullest possible advantage of it, and its right to do so was not questioned during the handling on the property. On June 9, 1966 the Staff Officer wrote to the General Chairman as follows:

"When I informed you in conference on April 22, 1966 that the five GE traction motors were all under warranty, you agreed that this was in accord with past practice and not controlled by Article II of Mediation Agreement A-7030. I am developing the information which will establish this as a fact. It will be furnished you shortly."

The General Chairman seems not to have questioned the statement, but asked for evidence concerning the warranty, which he finally received with copies of the seven purchase orders entitled "G.E. Co. Warrant Unit Exchange Plan - Option No. 1". However, as above noted there were two motors not under warranty, which were sent in before the claim was presented and denied, and one thereafter.

The classification of work rule does not specify the rebuilding of traction motors, although it mentions the "milling", etc., "of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines," "welding on work generally recognized as machinists' work; * * * and all other work generally recognized as machinists' work".

The carrier admits that some traction motors have in the past been rebuilt on the property, but alleges that these 5-GE-752-E traction motors are substantially different, have never been and cannot be rebuilt there, because essential equipment is not available; that the rebuilding of the traction motors in question therefore does not constitute "work set forth in the classification of work rules", so as to come within Article II of the Mediation Agreement; that if it does come within Article II it can be accomplished by unit exchange under Section I of Article II because skilled manpower is not available on the property, and because essential equipment is not available. It states the circumstances as follows:

"The Burlington had never rebuilt model 5-GE-752-E traction motors. Locomotive units purchased between 1934 and 1943 had been equipped with General Electric traction motors. These units were of a much lower horsepower. The traction motors used thereon were dissimilar from the model 5-GE-752-E in many respects. These older traction motors varied between 125 and 250 horsepower each and were on switch engines. The newer traction motors model 5-GE-752-E are subjected to much higher horsepower, 600-750 horsepower each. This produces more intense heat and within the limited space available on a diesel locomotive, many problems are presented in dissipating that heat.

"One answer developed in 1962 for dissipation of heat produced by higher horsepower traction motors is the process known as tungsten inert gas welding of the commutators. In older traction motors solder was used to join the armature coil lead with the commutator riser. At high temperatures this solder was frequently dislodged causing hot spots and major repairs.

"General Electric developed the tungsten inert gas welding process, called TIG welding. This welding process uses tungsten for the electrode. The molten weld puddle is protected from the atmosphere during the welding operation by a mixture of helium and argon. These gases are used to shield the weld from the atmosphere. TIG welding permits a greater overload capacity, results in reduced repairs and maintenance expense. Time has proven it to be far superior to previous soldering or brazing of commutators.

"Attached hereto marked 'Carrier's Exhibit No. 1' is a copy of two-page pamphlet numbered GEA-7568 which explains TIG welding. Also attached marked 'Carrier's Exhibit No. 2' is a sketch showing how this welding operation is performed.

"There is other machinery not shown on the sketch required to automatically TIG weld commutators of traction motors. Several tanks are required to store the gases used, as well as a separate machine to feed the coils of tungsten electrode. A completely automatic TIG welding outfit costs approximately \$32,000.

"Because the Burlington had never before rebuilt model GE-752-E traction motors, and since we did not have any TIG welding equipment, a decision was made to send all General Electric traction motors of this model to the manufacturer for unit exchange. This included the traction motors not covered by warranty.

"Of course, all traction motors returned to General Electric in 1964 and 1965 were covered by the two-year or 250,000 mile warranty. In 1966 there were seven traction motors sent to General Electric covered by warranty, and three traction motors also returned on a unit exchange basis which were not warranty. These last mentioned three traction motors are the subject of this dispute.

"In April of 1966 the electricians' and machinists' organizations made inquiry about sending General Electric traction motors to the manufacturer. A conference was held with both General Chairmen on April 22, 1966, at which time they were advised that this policy had been adopted for the reasons briefly outlined above. Another factor was the shortage of help existent at our West Burlington Shops, where all locomotives are rebuilt.

"Under date of May 29, 1966 the machinists' organization filed a claim on behalf of two West Burlington machinists. These two claimants were employed full-time at the West Burlington Shops, and are still so employed. No employees have been laid off at that point in any craft at any time pertinent to this dispute. The claim was declined on the basis that the rebuilding of General Electric traction motors model 5-GE-752-E were not covered by Article II of Mediation Agreement A-7030, since they had never before been rebuilt by the Carrier.

"The parties continued to exchange correspondence on this dispute. Under date of January 3, 1967 the Organization was given complete advice as to all of the traction motors shipped to General Electric during the year 1966, which included seven under warranty and three not under warranty. A copy of the Carrier's letter of that date is attached marked 'Carrier's Exhibit No. 3'. The Board will also note that in that letter the Carrier gave notice to the Organization that if this traction motor work was held to be covered by Article II of Mediation Agreement A-7030, this letter of January 3, 1967 was to be taken as notice under Section 2 of that Article that the subcontracting of all rebuilding of model 5-GE-752-E traction motors was necessary. The Carrier cited from the agreement the following criteria as applicable to this subcontracting:

'(2) Skilled manpower is not available on the property from active or furloughed employees.

'(3) Essential equipment is not available on the property.'

"This notice explained that there have been eight to ten vacancies throughout the year 1966 at the only place where this operation could be performed -- the West Burlington Shops. The notice of January 3, 1967 also explained that a machine to TIG weld the armatures was required as essential equipment."

* * *

"In considering the application of Rule 45 to traction motor repairs, the Board should also bear in mind the lack of equipment to TIG weld the armatures. It cannot be questioned that this new welding process is essential to the proper overhaul of model 5-GE-752-E traction motors. The processes used at our West Burlington shops on other models of traction motors will not hold up under these higher horse powers and more intense heat. The Carrier was not equipped to take on this work at the West Burlington shops. To do so would require a capital expenditure of \$32,000."

The General Chairman contended that "the listing of the need for a TIG welding machine is not factual; that many people familiar with the repair of these traction motors agree that this work could have been performed with our present equipment".

However the Carrier submitted a statement from the General Electric Company, the manufacturer of these traction motors, which explains the need for the process as follows:

"Historically, one of the weakest parts of d-c rotating equipment has been the connection between the armature coil lead and the commutator riser.

"Solder, most often used to join the lead and riser, frequently melts and is 'thrown' at high temperatures resulting from short-term overloads and other causes. This creates increased resistance at the lead-riser joint, causing hot spots. In time, major repairs may be necessary.

"Previous attempts have been made to solve this problem by using either a high temperature soft solder, such as lead-silver, or a brazing alloy. Both are better than conventional tin solder, but with lead-silver it is difficult to obtain uniformly low contact resistance and brazing is time consuming and costly.

"Now, after several years of research, General Electric, alone, offers a new metal joining method for d-c armature connections. This is another step in helping you achieve Productive Maintenance, maintenance calculated to produce the lowest total cost per unit of production.

"Called TIG welding, the process uses Tungsten for the electrode, while an Inert Gas shields the weld puddle from all atmospheric contamination. No filler metal of any kind is added. The joint is all copper, a fusion of coil lead and riser, assuring a strong, positive connection."

* * *

"TIG welding is presently being used by General Electric in the manufacture and repair of a broad range of industrial and transportation service motors and generators."

Even in the absence of such special conditions it has long been held by the Second Division of the National Railroad Adjustment Board that the sending out of traction motors on a unit exchange basis, and not for actual reconditioning or repairs, is not in violation of work rules. Awards Nos. 2188, 2377, 2922, 3994, 3995, 3996, 3997, 3998, 3999, 4002, 4523, 4548 and 4722. The special conditions indicated here are the lack of equipment shown by the manufacturer as well as the Carrier to be necessary, and the consequent fact that traction motors of this type have never been rebuilt on the property so as perhaps to have come within the classification of work generally recognized as within the Agreement. Consequently the unit exchange of these traction motors is not

within the provisions of Article II of the Mediation Agreement of September 25, 1964, and if it were, would come within the third essential criterion of Section 1 thereof, namely that essential equipment is not available on the property.

The Employees rely upon Second Division Awards Nos. 3457 and 3720. But in both of those awards it was stressed that the shop was fully equipped to perform the work.

In Award No. 2, this Special Board said:

"The unmistakable intent and aim of Article II, Section 1(3) of the Agreement is to proscribe subcontracting only when the essential equipment is, in fact, available on the property."

It is not necessary to consider the additional contention of the Carrier that sufficient skilled personnel were not available.

A W A R D

Claim denied.

Adopted at Chicago, Illinois - *October 24, 1967*

Howard A. Johnson
Neutral Member

M. E. Parks

J. H. Quinn
Carrier Members

Employee Members Attached

Employee Members

S. B.A.No. 570
Award No. 59
Case 82

SHOP CRAFTS SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

DISSENTING OPINION OF EMPLOYEE MEMBERS

The decision is not in keeping with the facts and the Agreement. The record before the Board showed the Carrier as having a repair shop at West Burlington where "traction motors are overhauled and rebuilt, and the modern tools and equipment used by West Burlington's skilled shop force."

The so called "TIG" (Tungsten Inert Gas) welding is nothing more than the heli-arc welding process which Carrier admits it has in its shops at West Burlington. Employees Exhibit G, a letter from the General Chairman to the Carrier states:

"Your listing of the need for a tig welding machine is not factual at all. I have talked to many people familiar with the repairs of these traction motors and they all agree that this work could be performed with our present equipment. You are well aware that this shop is equipped with all the latest and modern welding equipment which includes Sigma-welders, heli-arc, etc."

Article VI Section 11 of the Agreement of September 25, 1964 provides that:

"Each written submission shall be limited to the material submitted by the parties to the dispute on the property***".

This dispute was taken off the property when the General Chairman filed notice, dated March 1, 1967 pursuant to Article VI Section 9 of the Agreement, to the Carrier and members of the Board.

Employee Members Dissent - Continued -

S.B.A. No. 570
Award No. 59
Case 82

Yet the Carriers submission contained "literature from General Electric" transmitted with Carriers letter dated March 11, 1967 which was received by the organization on March 14, 1967 in the following manner (Carrier's Exhibit No. 5).

"I am enclosing herewith some literature from General Electric relating to tig welding".

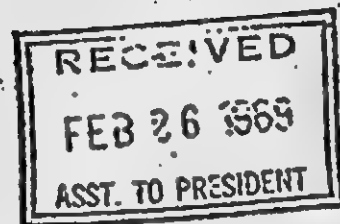
The employees submission had been previously filed with the Employee members of the Board in accordance with Article VI Section 10 of the Agreement.

The inclusion of such material in Carrier's submission, which was in violation of Article VI, Section 11, was protested by the employee members of the Board in discussing this case with the Referee. It is this literature that the Referee asserts is "a statement from the General Electric Company" and on which he relies to support his palpably erroneous decision. The decision is not in keeping with the facts and Agreement Rules and we vigorously dissent.

Paul Marshall
(Employee Member)

Richard E. Whitus
(Employee Member)

February 24, 1969



Mr. E. J. Hayes
President, System Federation No. 95
and General Chairman, SMWIA
545 South Broadway
Aurora, Illinois 60505

Mr. G. R. DeHague
Secretary, System Federation No. 95
and General Chairman, IAMAW
2516 Yoder Drive
Burlington, Iowa 52601

Mr. A. L. Kohn
General Chairman, IBBISBBF&H
2303 North 49th Street
Milwaukee, Wisconsin 53210

Mr. C. H. Long,
General Chairman, IBF&O
1201-1/2 Regents Boulevard
Tacoma, Washington 98466

Mr. W. J. Peck
General Chairman, IBEW
360 Robert Street
St. Paul, Minnesota 55101

Mr. N. G. Robison
General Chairman, BRCA
4100 Cornhusker Highway
Lincoln, Nebraska 68504

Gentlemen:

Reference is made to your letter of February 18:

I have reviewed the files and discussed this matter with our Labor Relations and Mechanical Officers and cannot accept your characterization of our efforts to settle this controversy.

The Burlington has a long history of living up to its labor agreements and for its fairness in the administration of those agreements.

I realize that parties to agreements often differ in their interpretations of such agreements. However, the records show that before Special Board of Adjustment No. 570 and the Second Division, N.R.A.B., the Burlington's interpretation has been upheld more often than not, and where a violation was found, the Carrier has promptly complied with the Award.

I have reviewed your Section 6 notice and must agree with the position taken by the Labor Relations Department -- that your proposals would encroach on management prerogatives to such an extreme extent that your notice is not subject to mandatory collective bargaining. Nevertheless, it is my sincere hope and desire that this dispute can be amicably disposed of at the meetings scheduled to commence on February 27, 1969.

Yours truly,

(Signed) WILLIAM J. QUINN

bcc - Messrs. A. E. Egbers,
R. E. Taylor.

AFFIDAVIT OF WILLIAM J. JACKEL ON BEHALF OF PLAINTIFF

DOCKET ITEM 14

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD)
COMPANY,)

Plaintiff,)

v.)

RAILWAY EMPLOYEES' DEPARTMENT,)
AFL-CIO, et al.,)

Defendants.)

Civil Action No. 630-69

AFFIDAVIT OF
WILLIAM J. JACKEL
ACF INDUSTRIES

State of Missouri

County of St. Charles

My name is William J. Jackson. I am a Vice President of ACF Industries, Incorporated (ACI). I am in charge of the railroad car manufacturing activities of the American Car and Foundry Division of ACF. The American Car and Foundry Division of ACF Industries is a manufacturer of freight cars of all types. I have been engaged in these and other manufacturing for more than twenty-five years. As a matter of continuing business activity and employment by ACF, I am required to be and am informed and knowledgeable about the matters set forth below:

If the Burlington Railroad were required to manufacture those component parts normally manufactured by builders of rolling stock and thereafter assemble all of its freight cars instead of purchasing these parts or the freight cars as units, it would need a plant of specialized design, size and output. It would be unrealistic and impossible to state an opinion of the cost of providing plant equipment and personnel for the manufacture of all component parts, as this is not done by any freight car builder in the United States.

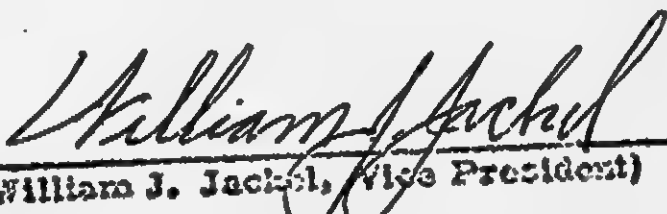
Assuming an annual Burlington requirement for an average of 1,500 freight cars, with a normal mix of box cars, flat cars, hopper cars, and refrigerator cars, and the various varieties of each as they are generally being ordered today, it is my opinion:

- (1) that a modern efficient plant of this kind would cost more than 17,730,000 dollars, including necessary tools and facilities;
- (2) that approximately 1,225 employees, supervisors and officers would be needed for its operation;
- (3) that annual payroll cost of approximately 9,855,000 dollars would be incurred based on current labor costs;


(3) that as a matter of sound business judgment, an engineering and research activity would also have to be undertaken involving the initial plant cost in equipment investment of approximately 100,000 dollars, an employment force of approximately 45 persons, and an annual payroll of approximately 500,000 dollars for necessary engineering and research activity.

Even if a new, modern and efficient plant were built and operated of the size, cost and scale set forth above, the volume of cars to be produced at such a plant would be too small to realize cost efficiencies of mass production. Therefore, in my opinion, the unit cost of freight cars built at an average volume of 1,500 new cars annually at such a plant would be approximately 60 per cent greater than the unit cost of identical cars built in the shops of ACF.

As a matter of current business practice and custom, which is based on economic consideration including the problem of patent rights not owned by ACF, it does not manufacture all component parts of the freight cars it builds. Approximately 50 per cent of the component parts of the freight cars ACF currently sells are purchased from manufacturers and suppliers outside of ACF.


(William J. Jackel, Vice President)

Subscribed and sworn to before me
this 27 day of March 1969.


Notary Public

My commission expires:

NOTARY PUBLIC, STATE OF MISSOURI
MY COMMISSION EXPIRES JULY 18, 1971
ISSUED THRU MISSOURI NOTARY ASSOCIATION

AFFIDAVIT OF M. W. MAKAR ON BEHALF OF PLAINTIFF

DOCKET ITEM 15

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, et al.,

Defendants.

Civil Action No. 630-69

AFFIDAVIT OF
M. W. MAKAR
GENERAL ELECTRIC COMPANY

AFFIDAVIT

My name is M. W. Makar. I am Manager-Finance for the Locomotive Department of the General Electric Company. I am in charge of the financial activities of the Locomotive Department of the General Electric Company. I have been engaged in these and other related matters for approximately fourteen years. Because of the foregoing, I am informed and knowledgeable about the matters set forth below.


If the Burlington Railroad were required to manufacture some and acquire the remainder of the components necessary to manufacture and assemble its new locomotives, instead of purchasing such locomotives from others, it would need a plant of specialized design, size and output.

Assuming an annual Burlington requirement of 25 new locomotives, and of the type of locomotives generally purchased today, it is my opinion:

- (1) That a modern, efficient plant of this type would cost approximately \$15 000 000 - \$20 000 000 including the necessary tools and facilities;
- (2) That approximately 200 - 250 employees, supervisors and operators would be needed for its operation; and,
- (3) That annual payroll costs of approximately \$2 000 000 - \$2 500 000 would be incurred based on current labor costs; and,
- (4) That as a matter of sound business judgement, a research and development activity would also have to be undertaken involving an initial plant and equipment investment of approximately \$3 000 000 and employment of approximately 30 persons with an annual payroll of approximately \$350 000 - \$400 000 just for this research and development activity.

Even if a new, modern and efficient plant were built and operated which was of the size, cost and scale set forth above, the volume of locomotives to be produced at such a plant would be too small to realize the cost efficiencies of mass production or to justify the research and development which is necessary in order to provide efficient, modern locomotives. Therefore, the unit cost of locomotives built at an average volume of 25 new locomotives annually would be approximately 2 to 2-1/2 times the unit cost of an identical locomotive built in our own shops.

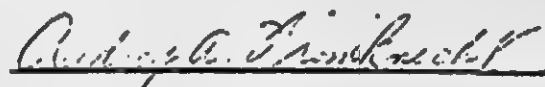
As a matter of current business practice and custom, which is based on economic considerations including the problem of patent rights which might not be owned by our company, General Electric Company, does not manufacture all of the components in the new locomotives we sell.



M. W. Makar
Manager-Finance
Locomotive Department

(Seal)

Suscribed and sworn to before me
this 28th day of March 1969.



Name of Notary

SUPPLEMENTAL AFFIDAVIT OF I. C. ETHINGTON
ON BEHALF OF PLAINTIFF

DOCKET ITEM 16

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, et al.,

Defendants.

Civil Action No. 630-69

SUPPLEMENTAL AFFIDAVIT
OF I. C. ETHINGTON

I. C. Ethington, being duly sworn, deposes and says:

1. I am the same I. C. Ethington who signed the "Affidavit of I. C. Ethington on behalf of plaintiff" previously filed herein.

2. I have read the affidavit filed by the defendants in this action. The purpose of this affidavit is to set forth the facts regarding suggestions in the defendants' affidavit as to the effect on the Burlington's operations of the defendants' demands. Agreement to the unions' demands -- even if we assume that the unions would exercise their powers in a reasonable manner -- would give the unions an absolute veto over the acquisition and repair of equipment, a function that inherently belongs to management.

3. In their affidavit, the defendants suggest that their demands would not really preclude Burlington from "contracting out" work when that is necessary. Accordingly, the precise nature of the defendants' demands should be made clear.

4. The defendants' original section 6 notice, attached to the Complaint as Exhibit B, proposed an agreement providing that "work set forth in the Classification of Work Rules and/or work generally recognized as work of the craft or crafts parties to the agreement shall not be contracted except by special agreement. . . ." Similarly, in the unions' most recent demand, handed to the Burlington's representatives on March 8, 1969 (Upton Affidavit, pp. 20-21), the defendants demanded that the Burlington agree that the "work set forth in the classification of work

rules of the crafts parties to this agreement will not be contracted."

5. Accordingly, everything within the scope of the defendants' classification of work rules is within the scope of the defendants' present demands. Some of the important mechanics' classification of work rules are set out in Exhibit A to the Upton Affidavit. Lists of the numerous operations or work that come within the classification of work rules are attached hereto as Attachment A. As explained in the Upton Affidavit, these rules serve only to allocate such work as is done on the Burlington among Burlington's employees; they were not intended to be restrictions on the railroad's right to purchase needed services or equipment. The unions' present demands, however, would convert the classification of work rules into restrictions on Burlington's right to contract out repairs and other work or to purchase equipment. It has been reported to me that the defendants have made it clear, and their affidavit does not deny, that the unions include the acquisition of equipment within the scope of the demanded veto over "contracting out."

6. Not only would these demands require Burlington to undertake the repair of much complicated machinery which it is not equipped to repair, but they would also require Burlington, a transportation company, to initiate extensive manufacturing operations. The costs of engaging in some of these manufacturing operations are indicated in affidavits of representatives of manufacturers, filed herewith. Any finished product originates with basic raw materials, which are processed in a manufacturing plant by various operations and then assembled. Thus, two important finished products used by railroads are railroad cars and locomotives. They are constructed of steel, copper, wood, and other raw materials, which have been processed into numerous component parts that go into a completed railroad car or locomotive. The classification of work rules of the crafts involved in this dispute cover most of the work or labor required to process or make most of the component parts of locomotives or cars from basic materials. In addition to the materials,

what is needed to make the finished cars or locomotives is a manufacturing plant equipped for the work, staffed with appropriately skilled employees. The unions' written demands would require Burlington to permit employees represented by the defendants to perform this work. If the unions are given and exercise the veto which they have demanded, Burlington would be required to go into the manufacturing of most of the many component parts of locomotives and cars, and the assembly of those parts into complete locomotives and cars. That would also be true with respect to work equipment, automotive equipment, and thousands of other items of equipment used by Burlington in conducting its transportation business.

7. For example, Burlington now purchases main generators for diesel locomotives. Acceding to the unions' demands would require Burlington to manufacture these generators unless the several unions agree to their purchase. That is so because, in general, the work required to change basic materials into a main generator is covered by the classification of work rules of the crafts in this case. The manufacture of a main generator would require the services of machinists, blacksmiths, and electricians, as described in their classification of work rules. Thus, if Burlington agreed to the unions' written demands, its machinists could claim that they are entitled to do the slotting, milling, grinding, and bolting of all the metal used in a main generator; its blacksmiths could claim the work of forging, bending and welding of certain parts; and its electricians could claim the work of installing all the electric wiring.

8. In brief, a main generator consists of steel, copper wiring, insulation, and other materials, which are assembled in a manufactured metal frame. Virtually all the work involved in turning these basic materials into the various parts of a main generator is within the classification of work rules for the crafts represented by the defendants. Thus, under the unions' demands, Burlington would be required to manufacture such generators unless the unions did not exercise the veto and agreed to permit their purchase.

9. The main generator in a diesel locomotive is driven by a diesel engine. Here again, the shop crafts could claim, now or later, that they are entitled to manufacture diesel engines and all component parts therein if their current demands are accepted. The work required to manufacture a majority of the many parts in a diesel engine would come within the classification of work rules for machinists, boilermakers, blacksmiths, sheet metal workers, molders, and electricians.

10. There are more than 230,000 separate parts in a typical diesel locomotive, including such parts as the cab, running gear, wheels, etc., etc., the manufacture of most of which would be within the scope of the shop crafts' classification of work rules. It takes four parts catalogues nearly a foot thick in total to list the many parts of a modern diesel locomotive. Not even the diesel locomotive manufacturers fabricate all these parts. They purchase many of them. (See affidavits filed herewith.)

11. Burlington requires approximately 25 new diesel locomotives each year. None have ever been manufactured by Burlington. Basically, two different types of diesel locomotives are used and they differ in basic mechanical concept. General Motors manufactures a diesel locomotive having a two cycle engine, while a General Electric locomotive has a four cycle engine. This primary difference in the engine would necessitate different tooling for manufacture or repair.

12. The work involved in the manufacture of most of the component parts in freight cars would also be within the defendants' classification of work rules. Freight car couplers are an example. The coupler is attached to the end of the car and couples to a similar device on an adjacent car. Burlington now purchases these couplers from several manufacturers. The coupler is an assembly of one large and several smaller steel castings. The steel must be molded -- work within the molders' classification of work rule -- and milled, ground and finished -- work within the machinists'

classification of work rule. The work involved in final assembly of the coupler would be within the carmen's classification of work rule.

13. A similar situation prevails with respect to freight car doors. Under the unions' written demands, the shop crafts could claim that they are entitled to perform the work involved in manufacturing doors. A freight car door may appear to be a relatively simple part of a freight car. However, the conversion of basic materials into freight car doors requires work which is within the scope of the machinists', blacksmiths', and sheet metal workers' classification of work rules. Thus, if Burlington acceded to the unions' written proposals, the shop crafts could claim that they are entitled to manufacture car doors, and that Burlington is therefore precluded from purchasing doors from suppliers without the unions' consent.

14. The same is true of steel freight car wheels. Neither Burlington, nor any other railroad so far as I am aware, has manufactured such wheels in the past several decades. However, virtually all the work that goes into the conversion of steel into finished freight car wheels appears to fall within the literal scope of the machinists', blacksmiths', and molders' classification of work rules. Thus, shaping of the basic metal is molder's work if the wheel is cast, and blacksmith's work if the wheel is forged. After the hot metal has been shaped into a wheel, the machinists could claim that they are entitled to do any machining necessary. Therefore, if Burlington signed the written agreement proposed by the unions, the right to manufacture freight car wheels would be subject to a union veto and now or later could be claimed by Burlington's shopcraft employees.

15. I could go on in a similar vein with respect to the numerous other components of freight cars. There are a great many such components the manufacture of which requires work which is within the scope of the shopcrafts' classification of work rules -- e.g., axle bearings, braking systems, floor systems, sides, sill steps, side ladders, etc. Not even freight car manufacturers fabricate all these different parts. They buy many components. Under the unions' written demands, however, Burlington

would not only be required to construct all its freight cars, but, in addition, it would be required, now or later, to manufacture component parts except when the General Chairmen forego their veto and agree to the purchase.

16. Burlington now requires approximately 1500 new cars each year of various descriptions. The different components necessary to construct or repair any car vary considerably. The parts are often patented, and require a variety of kinds of machinery to manufacture.

17. What I have said above is true not only with respect to the manufacturing of new equipment but also extends to the maintenance of equipment and the manufacture of replacement parts. The work involved in such manufacture, maintenance, and rebuilding would be within the scope of the unions' demands. Moreover, what I have said would be applied under the work rules not only to rolling stock (railroad cars and locomotives), but also would include the various kinds of work equipment used to maintain track and right-of-way, trucks and cars, electric motors, microwave communications equipment, and practically all mechanical equipment and machinery used by the railroad.

18. In short, under the written demands made by the unions in this case, Burlington would be required, unless the unions forego their veto, to undertake the manufacture of virtually all the equipment it uses, and the manufacture of most of the many parts that go into assembly of such equipment. To comply with such a requirement, it would be necessary for Burlington to make enormous investments in manufacturing facilities. In short, accession to the unions' demands would convert Burlington from a transportation company to a large-size, small-volume manufacturer. Manufacturing is not Burlington's business.

19. The extremely unreasonable character of the unions' demands is indicated by the enormous investment that would be required to establish major manufacturing facilities, and by the extremely high costs of small-volume manufacturing. There are only two manufacturers of railroad

locomotives in the United States today -- Electromotive Division of General Motors and General Electric. As shown by affidavits filed herewith, Burlington would be required to make huge investments to establish its own facilities for the manufacture of locomotives and locomotive replacement parts and to engage in such manufacturing. Fifteen dollars per foot² for the shop would be just the beginning of the required investment. Even after making such an investment, it would cost Burlington much more to produce locomotives than it costs GM or GE. That is so because Burlington requires only 25 new locomotives each year, while GM and GE manufacture a great many locomotives each year and thus are able to obtain the savings made possible by volume production. Moreover, not even GM and GE are required to manufacture virtually all the parts used in locomotives as would be required of Burlington under the unions' demands; GM and GE purchase many component parts. A similar situation exists with respect to car manufacturing, as is indicated by affidavits filed herewith. Relevant principles are also illustrated by the advertisement from the March 17-24, 1969, issue of Railway Age attached hereto as Exhibit B.

20. The defendants have indicated in their affidavit that they would permit Burlington to purchase new locomotives and box car component parts in accordance with present practices. However, if Burlington signed the unions' written demands, the unions would have the continuing right to veto such purchases if they ever choose to do so. Moreover, the unions' ostensible concessions do not permit the acquisition of locomotive replacement parts, the acquisition of assembled box cars, the acquisition of other kinds of cars and the components thereof, or the acquisition of any of the many kinds of equipment other than rolling stock which the railroad uses in conducting its transportation business. And the unions' concessions would not permit Burlington to engage others to perform any repairs or other work of any kind or description.

21. Perhaps the unions would not insist today that Burlington employees perform all of the operations described in the examples cited above required in the manufacture and repair of the various pieces of equipment used in operating a railroad. Certainly they could not rationally expect Burlington to manufacture and repair all the equipment it uses. But the unions' Section 6 notice and their March 8 demand would give the General Chairmen of the unions -- today or later -- the power to decide what the railroad could and could not do. That veto power goes so far that the General Chairmen could decide whether the railroad could operate at all.

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

I. C. Ethington

Subscribed and sworn to before me
this _____ day of _____, 1969.

Notary Public

My commission expires:

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH AFFIDAVIT
OF MESSRS. G. R. DEHAGUE, ET AL. AND APPENDICES
A-O IN SUPPORT THEREOF

DOCKET ITEM 19

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, et al.,

Defendants.

CIVIL ACTION

NO. 630-69

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants move the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment in defendants' favor dismissing the action on the ground that as to the relevant and material facts of record there is no genuine dispute, and defendants are entitled to judgment as a matter of law.

A statement of the material facts as required by Rule 9(h) of this Court are attached.

Respectfully submitted,

Edward J. Hickey, Jr.
James L. Highsaw, Jr.
William J. Hickey

620 Tower Building
Washington, D. C. 20005

Counsel for the Defendants

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

March 28, 1969

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, et al.,

Defendants.

CIVIL ACTION

NO. 630-69

STATEMENT OF MATERIAL FACTS AS TO WHICH DEFENDANTS
CONTEND THERE IS NO GENUINE ISSUE

Pursuant to Rule 9(h) of this Court, the Defendants submit the following statement of material facts:

Defendants state that the material facts of record descriptive of the actions taken by defendants in seeking resolution of the dispute giving rise to this litigation by their exhaustion of the procedures of the Railway Labor Act, 45 U.S.C.A. 151 et seq., are set forth in defendants' affidavit submitted in support of its memorandum in opposition to plaintiff's motion for a temporary injunction and in support of defendants' motion for summary judgment.

Defendants believe that the repetition here of the described material facts set forth in defendants' affidavit would be unduly burdensome on the Court and the same are incorporated herein by reference.

Respectfully submitted,

Edward J. Hickey, Jr.
James L. Highsaw, Jr.
William J. Hickey
620 Tower Building
Washington, D. C. 20005

Counsel for the Defendants

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

March 28, 1969

CERTIFICATE OF SERVICE

This is to certify that I have today served personally upon Francis M. Shea, Esquire, 734 Fifteenth Street, N. W., Washington, D. C. 20005, counsel for the plaintiff, a copy of the foregoing Motion for Summary Judgment and attachments thereto.

WILLIAM J. HICKEY

March 31, 1969

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY, 547 West Jackson Boulevard,
Chicago, Illinois,

Plaintiff,

v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
220 S. State Street, Chicago, Illinois;
SYSTEM FEDERATION NO. 95, Railway
Employees' Department, AFL-CIO,
2516 Yoder Drive, Burlington, Iowa;
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
1300 Connecticut Avenue, N. W.,
Washington, D.C.; INTERNATIONAL BROTHER-
HOOD OF BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS AND HELPERS, 400
First Street, N.W., Washington, D.C.;
SHEET METAL WORKERS' INTERNATIONAL ASSOCI-
ATION, 1000 Connecticut Avenue, N.W.,
Washington, D.C.; INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, 1200 - 15th
Street, N.W., Washington, D.C.; BROTHERHOOD
RAILWAY CARMEN OF UNITED STATES AND CANADA,
400 First Street, N. W., Washington, D.C.;
INTERNATIONAL BROTHERHOOD OF FIREMEN AND
OILERS, 200 Maryland Avenue, N.E., Washing-
ton, D.C.,

Defendants.

CIVIL ACTION
NO.

WASHINGTON)

) ss.

DISTRICT OF COLUMBIA)

AFFIDAVIT

Messrs. G. R. DeHague, Edward Hayes, M. G. Jewett, Arthur Kohn,
W. J. Peck, N. G. Robison, and Paul Marnell, being duly sworn, depose
and say as follows:

1. That Mr. G. R. DeHague is General Chairman of employees of
the Chicago, Burlington & Quincy Railroad Company (Burlington) repre-
sented for the purposes of the Railway Labor Act by the International
Association of Machinists and Aerospace Workers; that Mr. Edward Hayes
is General Chairman of employees of the Burlington represented for the

purposes of the Railway Labor Act by the Sheet Metal Workers International Association; that Mr. M. G. Jewett is Assistant General Chairman of employees of the Burlington represented for purposes of the Railway Labor Act by the International Brotherhood of Firemen and Oilers; that Mr. Arthur Kohn is General Chairman of employees of the Burlington represented for purposes of the Railway Labor Act by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; that Mr. W. J. Peck is General Chairman of employees of the Burlington represented for the purposes of the Railway Labor Act by the International Brotherhood of Electrical Workers; that Mr. N. G. Robison is General Chairman of employees of the Burlington represented for purposes of the Railway Labor Act by the Brotherhood Railway Carmen of United States and Canada; that Mr. Paul Marnell is Assistant to the President of the Railway Employees' Department, AFL-CIO; that all of these individuals have acted as representatives for the employees involved in the labor dispute between the above-named organizations and the Burlington which is the subject matter of this litigation and are familiar with the facts relating thereto.

2. That the six railway labor organizations involved in the labor dispute which is the subject matter of this litigation represent the bulk of the shop workers employed by Class I railroads of the United States, including the shopcraft employees of plaintiff Burlington Railroad.

3. That the background of the present labor dispute is set forth by the Report to the President of the United States by Emergency Board No. 160 appointed by the President of the United States pursuant to Section 10 of the Railway Labor Act (45 U.S.C.A., Section 160), created on March 17, 1964, to investigate and report to the President on a labor dispute between the unions here involved and various railroads, including the Burlington, growing out of railroad practices in the contracting out of work performed on the properties of the railroads by the employees

represented by these unions. This report is attached to the complaint as Exhibit B.

This report shows that the issue giving rise to the present labor dispute has its origins in the sweeping technological and organizational changes which have adversely affected the employment of railroad workers in the last 20 years; that while the thrust of technological change has been felt by all classes of railroad workers "its impact on shopcraft employment has been the most shattering"; whereas average shopcraft employment was 367,486 in 1945, it had dropped below 150,000 during the 1960's, representing a drop of approximately 60%; that in the view of the unions much of the decline in employment of shopcraft employees is attributable to the subcontracting of work formerly done by shopcraft employees to be performed outside of the railroad industry; that on the other hand railroads urged the need for complete freedom from restrictive rules which in their view impeded their right to manage and to allocate their work forces efficiently, thus posing a sharp conflict of interest between the railroads' asserted need for efficiency and the unions' asserted need for job security for the railroad employees which they represent; that "this Board is of the opinion that the public interest would be served by measures which would help to arrest the decline in railroad shop facilities. To the extent that subcontracting has played a part in the steady erosion of shop employment it has contributed to the draining away of a skilled labor pool from the railroad industry. The current shortage of railroad freight cars highlights the inability of the industry to meet the nation's needs for transportation, the inability which has aggravated some of our domestic and foreign problems. The national interest would be better served by maintaining the capacity of the railroad industry to keep its equipment in good working order and to expand its operations as needs require".

4. That consistent with this need for job security and the public interest in arresting the decline of railroad shop facilities and the

erosion of shop employment resulting in the draining away of a skilled labor pool from the railroad industry found by the Presidential Emergency Board, as quoted above, the shopcraft unions here involved had for several years been attempting to accomplish these purposes by the negotiation of agreements restricting the contracting out of work formerly performed on the properties of railroads. Thus, in the late 1950's these unions had negotiated an agreement which became effective on or about October 15, 1960, with the Pennsylvania Railroad Company (now the Penn-Central), the nation's largest railroad, which contained restrictions in varying degrees on the contracting out of the work of repairing, building, rebuilding, and upgrading of cars and locomotives and the procurement of components or parts of equipment either assembled or unassembled; that consistent with these purposes the shopcraft unions on or about October 15, 1962, served notices on approximately 147 line-haul railroads, including the Burlington, and terminal and switching companies, which included the majority of Class I railroads, excepting the Pennsylvania, the Southern, and the Florida East Coast Railway, of the desire of these shopcraft unions for revisions of their applicable collective bargaining agreements to provide greater job security, including restrictions on the contracting out of work by the railroads involved; that the carriers served counter proposals emphasizing their asserted need for complete freedom of action in this area; that the labor dispute thus created was processed by collective bargaining between the parties through the procedures provided by Section 6 of the Railway Labor Act (45 U.S.C.A., Section 156); that when the dispute was not resolved by such bargaining the mediation services of the National Mediation Board were invoked and further bargaining took place under the auspices of the Board pursuant to the provisions of Sections 5 and 6 of the Railway Labor Act (45 U.S.C.A., Sections 155 and 156); that mediation failed to resolve this labor dispute and when a strike was threatened the National Mediation Board recommended and the President of the United States appointed Emergency Board No. 160 on

or about March 17, 1964, to investigate and report to the President on this labor dispute.

5. That the Board rendered its report (which appears as Appendix B to the Upton Affidavit) on or about August 7, 1964; that the Board in that report recognized, as cited above, the drastic erosion of shop-craft employment on the nation's railroads and the need, not only in terms of job security of the employees involved but in terms of the public interest, to stop this draining away of skilled labor from the railroad industry by restricting or limiting the subcontracting out of work by the railroads; that as a consequence the Board reported to the President its recommendation that the parties agree upon a rule "which is largely procedural but which would represent a modest step forward in preventing some of the abuses which have arisen in the area of subcontracting" (emphasis supplied); that the recommendations on subcontracting read as follows:

"RECOMMENDATIONS ON SUBCONTRACTING

"We recommend the adoption of the following rule:

"The carriers agree that subcontracting of work, including unit exchange, will be done only when (1) managerial skills, skilled manpower or equipment are not available on the property, or (2) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (3) such work cannot be performed by the carriers except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on substandard wages.

"Except for proposed contacts involving minor transactions, if the carrier decides that in the light of the criteria specified above, it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. The representative of the organization will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action and will be given a reasonable opportunity for such discussion. This is not to be construed, however, as requiring the consent of the organization to such contracts.

"If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly.

"Any dispute over the application of this rule shall be submitted to the expedited arbitration procedure set forth below."

6. That following the submission of this report to the President of the United States, further negotiations and collective bargaining took place between the shopcraft unions and the railroads involved in the 1964 dispute, including the plaintiff Burlington, resulting in the signing of a mediation agreement under the auspices of the National Mediation Board on or about September 25, 1964, effective November 1, 1964. A copy of this agreement is attached as Exhibit A to the complaint; that Article II of this agreement dealt with subcontracting of work and read as follows:

"ARTICLE II -- SUBCONTRACTING

"The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II.

Section 1 -- Applicable Criteria --

Subcontracting of work, including unit exchange, will be done only when (1) managerial skills are not available on the property; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts.

Section 2 -- Advance Notice -- Submission of Data --
Conference --

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions. The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable

to reach an agreement at such conference the carrier may, notwithstanding, proceed to subcontract the work, and the organization may process the dispute to a conclusion as hereinafter provided.

Section 3 -- Request for Information When No Advance Notice Given --

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Section 4 -- Machinery for Resolving Disputes --

Any dispute over the application of this rule shall be handled as hereinafter provided."

That Article VI of such agreement provided a machinery for resolution of disputes over the application of Article II by the creation of a Shop Craft Special Board of Adjustment for the purpose of adjusting and deciding such disputes, consisting of four members (two appointed by the unions parties to the agreement and two to be appointed by the carriers parties to the agreement) to be augmented by a member selected from a panel of potential neutral referees.

7. That the shop craft unions here involved did not consider that this agreement has not prevented the continued erosion in employment of shopcraft employees, particularly on the Burlington, contrary to the interest of those employees and job security and contrary to the public interest in preventing the draining away of a skilled labor pool as found by Presidential Emergency Board No. 160 and quoted above; that during the period between September 1964 and September 1968 the number of shopcraft employees of the Burlington declined from approximately 4038 employees to approximately 2886 employees or a decline of approximately 1152 employees, or a decline of approximately 27% in this period of four years, as shown by reports of the plaintiff Burlington to the Interstate Commerce Commission based on a mid-month count of such employees by the carrier during the months of September 1964 and September 1968.

8. That in addition the shopcraft unions representing the shopcraft employees of the Burlington and the employees themselves were faced during the period on and after September 1964 by the management of the Burlington with actions and practices which these unions consider to be a bad faith application and interpretation of the purposes of the mediation agreement of September 25, 1964; that these practices and interpretations made it clear that the management of the Burlington had not reconciled itself to the findings of Presidential Emergency Board No. 160 that the public interest required limitations upon the subcontracting out of work which could be performed upon the property of the Burlington and that the management of the Burlington, in spite of the 1964 agreement, continued to insist both in practice and in words on an alleged managerial right to do as it pleased; thus the unions and the employees they represented were continuously faced with instances of the carrier contracting out work and not giving any notice as required by Article II; by the carrier insisting on narrow and technical interpretations of the agreement so as to exclude from the scope thereof subcontracting of work; that as an example the management of the Burlington when it began to acquire equipment from the General Electric Company insisted that work with respect to this equipment did not fall in the class of work covered by the agreement of 1964 because the carrier had not previously done such work or used such equipment; that when the carrier was confronted with the fact that it had, in fact, previously used G.E. equipment it then insisted that the work was not covered by the agreement because the equipment it was then acquiring had a different horsepower and a different model number than equipment used years before; that the management of the Burlington flatly informed the representatives of the unions involved that it did not intend to honor the agreement of 1964 with respect to work on such equipment which now comprises 11.9% of the locomotives of the Burlington railroad, including running repairs on such equipment; that more than 100 claims of violations of the agreement resulted; that this wholesale disregard for the requirements of Article II of the agreement of 1964 and the continued insistence of the Burlington upon an alleged

managerial freedom to do as it pleased in this area without regard to the interest of its loyal employees who had acquired an equity in this work through many years of service and in complete disregard of the public interest found by Presidential Emergency Board No. 160, was acknowledged by the management of the Burlington during the conferences held between representatives of the unions here involved and representatives of the Burlington during the course of the present labor dispute; that this acknowledgement is evidenced by a letter dated November 19, 1968, to operating personnel of the Burlington, a copy of which was furnished to the representatives of the employees, which read in pertinent part as follows:

"It has recently been brought to my attention by the Shop Craft Organizations that certain work has been subcontracted without proper notice to the Organizations. This is embarrassing to this department, to say the least, and certainly has not been conducive to good labor relations with the Shop Crafts. I do not want this Carrier subjected to further criticism for not complying with the terms of Mediation Agreement A-7030.

"Please make a definite lineup with the appropriate officers under your jurisdiction, and between the departments involved, so there will be no failure to fulfill our obligations under Mediation Agreement A-7030."

That, however, this letter failed to have any effect upon the situation and it has been wholly disregarded leading to the conclusion either that the letter constituted window dressing in the management's dealing with its employees or that the management is simply ignoring the recommendations of its labor representatives.

9. That while the unions here involved have not been wholly satisfied with the impact of the mediation agreement of September 25, 1964, upon shopcraft employment on the nation's railroads as a whole, i.e. the 147 carriers parties to that agreement, it has not encountered on these other carriers the management attitude of wholesale disregard of the requirements of the agreement and that the management intends to do as it pleases regardless of such requirements; that the procedures incorporated in the mediation agreement of September 25, 1964, for the settlement of disputes arising out of the application of Article II

thereof restricting the Burlington's right to subcontract work have proved inadequate to cope with the actions of a management so oriented; that these provisions were based upon the assumption that the agreement would be applied in good faith by both parties; that in spite of such good faith interpretation and application of the agreement there could arise an occasional good faith dispute and that the procedures for the settlement of such disputes would be adequate; that, however, this assumption has been destroyed by the bad faith interpretation and application of the agreement by the Burlington so that the procedures have proved totally inadequate to protect the interest of the employees and the public interest as found by Presidential Emergency Board No. 160.

10. That it became evident to the unions representing the employees that action was necessary within the framework of the Railway Labor Act to properly accomplish the interest of the employees and the public interest as found by Presidential Emergency Board No. 160; that this could be accomplished only by revisions of the collective bargaining agreement between the Burlington and the shopcraft unions so as to further restrict the railroad with respect to the subcontracting out of work in such a manner that there should be a minimum of leeway for the bad faith interpretation and application of the collective bargaining agreement by the Burlington management as experienced by the employees and the unions involved.

11. That the unions involved, defendants in the present action, therefore on or about March 25, 1968, served notice pursuant to the provisions of Section 6 of the Railway Labor Act (45 U.S.C.A., Section 156) of an intended change in the agreement of September 25, 1964, a copy of which notice is attached as Exhibit B to complaint; on March 29, 1968, the Burlington, through Mr. A. E. Egbers, Assistant to the President of the railroad, acknowledged receipt of the proposals of the unions and served a counter proposal of the railroad; that this letter from Mr. Egbers representing the Burlington management explained that

the counter proposal of the Burlington followed generally the counter proposal served on November 15, 1962, in the labor dispute which resulted in the findings and recommendations of Emergency Board No. 160 because the unions' notice was practically identical with that which had been served upon the Burlington on October 15, 1962, in that dispute; that this carrier counter proposal simply put into the form of a proposed collective bargaining agreement the Burlington's continuous insistence over the years that there should be no restriction of any kind upon its freedom to subcontract out shopcraft work regardless of the impact upon its employees and regardless of the impact upon the public interest observed by Presidential Emergency Board No. 160; that the Burlington's counter proposal which appears as Exhibit C to the complaint read in pertinent part as follows:

"The Section 6 notice served under date of March 25 is, insofar as it deals with contracting out work, practically identical to that which you served upon me under date of October 15, 1962. Therefore, our counter proposal to your Section 6 notice will follow generally the counter proposal served under date of November 15, 1962, on System Federation No. 95. Our modified counter proposal reads as follows:

"Eliminate all agreements, rules, regulations, interpretations and practices, however established, which in any way handicap or interfere with the Carrier's right to:

1. Contract out work.
2. Lease or purchase equipment or component parts thereof, the installation, operation, maintenance or repairing of which is to be performed by other than employees of the Carrier.
3. Trade in and repurchase equipment or exchange units.

"Also included as part of our counter proposal is the following modification to the September 25, 1964 Agreement (Mediation Agreement A-7030):

"Eliminate entirely Section 7 of Article I, providing for lump sum separation allowances."

12. That the Section 6 notice served upon the Burlington by the six unions who are here defendants did not as the carrier now erroneously alleges in its complaint and affidavits propose to prevent the railroad from doing any subcontracting of work; that the notice on its face recognized that there could and would arise situations in which the carrier believed it to be necessary to subcontract work; that in such event the Burlington should serve notice upon the duly designated representatives of the employees involved; that there should be conferences between the parties to discuss the carrier's proposed action; that if the parties were unable to reach an agreement on the subcontracting at such conferences the labor dispute thus created should be pursued and processed pursuant to the provisions of Section 4 of Article II of the Agreement of September 25, 1964, which states that "Any dispute over the application of this rule shall be handled as hereinafter provided;" that such dispute would then be resolved pursuant to the provisions of Article VI of the September 25, 1964, agreement providing for the creation of a Special Board to hear and dispose of such disputes; the Section 6 notice of the unions further provided that Section 14 of Article VI, which is the remedy provision for carrier violations of Article II, should be amended to impose a penalty paid to the employee or employees affected in the event that the Special Board created by Article VI found such violation; that the Section 6 notice further provided that there should be added to Article VI a provision that if the carrier subcontracted out work without giving any notice to the representatives of the employees, which the carrier had consistently been doing since the execution of the mediation agreement of September 25, 1964, such action "shall be considered a violation of the agreement and claims filed as a result thereof shall be allowed as presented"; that the Section 6 notice also contained a provision lifting the time limits on the progression of employee claims under Article II.

13. That thus the Section 6 notice of the unions simply attempted to tighten up the subcontracting out provisions so as to eliminate the abuses the employees had experienced from the Burlington management under the 1964 agreement and did not prevent the railroad from doing any contracting out as alleged in the complaint where it was decided that such contracting out is proper by the Special Board provided for in the agreement; that in contrast to this good faith effort of the employees to make workable an agreement between the Burlington and the employees on the subcontracting out of work and to find an accommodation between the views of the Burlington management and the needs of the employees for job security and of the public interest for the maintenance of skilled labor and shopcraft facilities by the railroads, the counter proposal of the railroad showed complete bad faith by seeking to threaten the employees by a return to the railroad's position, rejected by Presidential Emergency Board No. 160, that there should be no restrictions of any kind upon the exercise by the railroad of a decision to subcontract out its shopcraft work.

14. That the assertions of the Burlington in its complaint of a failure by the unions to bargain in good faith pursuant to the provisions of the Railway Labor Act following the serving of the notice of the unions and the counter notice of the railroad represents a complete distortion of the truth motivated by the overweening belief of the railroad that any restriction upon its subcontracting out of shopcraft work represents a "bad faith" attitude on the part of its employees in spite of the findings, conclusions and recommendations of Presidential Emergency Board No. 160 and speaks louder than any argument as to the validity of the unions' belief that the carrier at no time had acted in good faith in the interpretation and application or implementation of the agreement which the Burlington and the unions involved had executed on September 25, 1964, on the subject of subcontracting out of the railroad's work.

15. That between April 25, 1968, when the initial conference was held between representatives of the unions involved and representatives of the Burlington until the last conference between the parties on March 10, 1969, the union representatives met with representatives of the carrier on approximately 25 occasions and met with one or more mediators from the National Mediation Board alone at the request of such mediators on several other occasions in an effort to discuss, negotiate, and reach agreement; that these meetings consumed at least 50 hours of meeting time; that during a substantial portion of this time the unions were unable to get the Burlington to even discuss the unions' proposals for the amendment of Article II of the agreement; that the union representatives were repeatedly told that the railroad would not consider or discuss any amendments thereto; that the union representatives were also told by the carrier representative that if there were any amendments thereto the whole procedure for the settlement of disputes on the interpretation and application of the agreement on subcontracting would be junked; that the carrier repeatedly stalled on the holding of meetings; that the carrier insisted on an "indefinite recess" in the meetings on or about November 21, 1968, which the unions found unacceptable but which was forced upon the unions; that any bad faith bargaining which occurred during this period of time was the sole responsibility of and solely attributable to the Burlington and its refusal to seriously negotiate with the unions on amendments to Article II so as to protect the employees from the carrier's admitted substantial disregard of the restrictions and limitations on subcontracting of work contained in the mediation agreement of September 25, 1964.

16. That a brief resumé of the conferences, discussions and mediation which occurred following the serving of the unions' Section 6 notice and the counter notice of the Burlington is as follows:

(1) An initial conference was held with representatives of the unions and representatives of the Burlington in the Burlington's offices in Chicago on April 25, 1968, as suggested in Mr. Egbers' letter of March 29, 1968. However, Mr. Egbers himself did not attend this conference but rather left it to staff officers E. J. Conlon and J. D. Dawson; although Mr. Egbers has denied the position of the union representatives, it was quite clear to those representatives that Messrs. Conlon and Dawson were subordinate individuals who had no authority of any kind to conduct collective bargaining in the conferences between representatives of the parties which is required by Section 6 of the Railway Labor Act; as a consequence no progress was made during these discussions; indeed, throughout the whole period of conferences Mr. Egbers was present only on a hit or miss basis.

(2) On April 26, 1968, the Burlington raised the issue of whether the unions were required to serve notice and negotiate with all of the carriers parties to the 1964 agreement.

(3) On May 4, 1968, the unions answered this question, rejected the view of the carrier, and asked for May conferences between the parties.

(4) On May 13, 1968, Mr. Egbers answered and did not want any meetings until after June 1, 1968.

(5) On June 5, 1968, the unions wrote Mr. Egbers and again asked him to meet with them on June 10, 1968.

(6) On June 6, 1968, Mr. Egbers answered and did not want a meeting until July 2, 1968.

(7) On June 17, 1968, the Railway Employees' Department, AFL-CIO, with which the unions here involved are affiliated, wrote to the National Mediation Board invoking the mediation services of that Board and authorized the taking of a strike ballot as a necessary step in the process and to emphasize

to the carrier the seriousness of the problem and to get the carrier off dead center.

(8) On June 29, 1968, Mr. Egbers by phone indicated he wanted to change the date of the July 2nd meeting to a later date.

(9) On June 29, 1968, the unions circulated a strike ballot, an action which was legal under Section 6 of the Railway Labor Act in the circumstances involved.

(10) On July 5, 1968, the National Mediation Board wrote to Mr. Egbers informing him of the application for mediation services.

(11) On July 29, 1968, the National Mediation Board wrote a tracer to Mr. Egbers and he answered on the same date, claiming that mediation was premature.

(12) On August 6, 1968, Mr. Michael Fox, President of the Railway Employees' Department, AFL-CIO, answered Mr. Egbers' contention, listing the stall tactics of the Burlington, and advising the Board that there was no prematurity but that its mediation services were required.

(13) On August 10, 1968, the National Mediation Board docketed the labor dispute as Case No. A-8428 indicating that it had rejected the Burlington's contention and that the matter was properly before it as a mediation case.

(14) On August 23, 1968, Mr. Egbers wrote to the National Mediation Board alleging that it was improper for them to docket the unions' application for mediation.

(15) On September 6, 1968, the National Mediation Board answered the contentions of Mr. Egbers and suggesting further meetings of the parties while they were waiting for the assignment of a mediator by the National Mediation Board.

(16) On or about September 19, 1968, a meeting was finally arranged between the parties for September 25, 1968.

(17) On September 25, 1968, the representatives of the unions met at the designated time and place and were confronted with only staff officers Conlon and Dawson who, in the opinion of the unions, had no authority to enter upon serious negotiations.

(18) These representatives of the Burlington proposed meetings on dates running between October 14 and October 21, 1968.

(19) As a result of this continued stalling tactic on the part of the Burlington, President Fox of the Railway Employees' Department, AFL-CIO, called the National Mediation Board and requested the immediate assignment of a mediator.

(20) On September 26, 1968, the unions wrote to Mr. Egbers and accepted a conference on October 17, 1968.

(21) On September 30, 1968, Mr. Egbers wrote to the unions stating that staff officers Conlon and Dawson did have the requisite authority to act for the carrier and accepted October 17, 1968, as a date for conferences between the parties.

(22) On October 8, 1968, the unions were advised by telegram that Mediator Finnegan would be at the Atlantic Hotel in Chicago, Illinois, for a meeting on October 14, 1968.

(23) On October 9, 1968, the National Mediation Board by telegram advised the unions that they should meet with the representatives of the Burlington on October 14, 1968, and that Mediator Finnegan would be available for a meeting on October 22, 1968.

(24) On October 17, 1968, the representatives of the unions met with staff officers Conlon and Dawson of the Burlington but the unions were unable to conduct any serious negotiations with these alleged representatives.

(25) On October 19, 1968, the National Mediation Board advised the unions by telegram that mediation was deferred because of Board involvement in another matter.

(26) On October 19, 1968, System Federation No. 95 of the Railway Employees' Department, AFL-CIO, with which the unions here involved are affiliated, wrote to Mr. Egbers, advising him, among other things, that although they had received his statement that staff officers Conlon and Dawson had full authority to act for the Burlington, the October 17th meeting with these officers had proved as useless in terms of serious negotiations as had the efforts of the unions since March 25, 1968, to get such negotiations under way.

(27) On October 19, 1968, System Federation No. 95 wired Mr. Egbers that the Burlington should cease and desist from violations of their agreements and of the statute.

(28) On October 22, 1968, the National Mediation Board wired the unions that Mediator Peacock would meet with the parties at the Atlantic Hotel on October 24, 1968.

(29) On October 24, 1968, Mr. Egbers wired System Federation No. 95 that he had no knowledge of any carrier violations of the subcontracting agreement between the parties and in substance that the carrier would not stop the subcontracting which the unions believed to constitute such violations.

(30) Also on October 24, 1968, the union representatives met with Mediator Peacock from 10:00 a.m. to 3:00 p.m. and at his request reviewed their Section 6 notice, its intent and purposes.

(31) On October 28, 1968, at the request of the Mediator the representatives of the unions met with him from 10:00 a.m. to Noon and complied with his request for more discussion and dialogue on certain of the points involved in the labor dispute.

(32) At approximately 2:00 p.m. on October 28, 1968, the union representatives met in a joint meeting with the representatives of the Burlington at which the Mediator was present; at this meeting the carrier, in substance, maintained its position that it would not discuss or negotiate about revisions to Article II of the collective bargaining agreement; made no counter offer and Mr. Upton, an affiant in this case, advised the union representatives that the Burlington would never agree to consult with the union representatives on every subcontracting deal involving the carrier; during this meeting the union representatives were unsuccessful in attempting to get the representatives of the Burlington to negotiate about the matters contained in the unions' Section 6 notice of March 25, 1968.

(33) On October 29, 1968, the union representatives conducted a joint meeting with representatives of the Burlington from 10:00 a.m. to Noon and from 2:00 p.m. to approximately 4:25 p.m.; this meeting was a repetition of the meeting of October 28, 1968.

(34) On November 1, 1968, the union representatives were present at a joint meeting with the representatives of the Burlington and the Mediator from 10:00 a.m. to approximately 1:30 p.m.; at this meeting the Mediator asked questions of the union representatives about the intent and purposes of their Section 6 notice which were answered; among the questions specifically asked and specifically answered was that the notice did not intend to cover or restrict the carrier in purchasing new locomotives; that the notice allowed the present practice on the purchases of component parts for the assembling of box cars; that there was an argument between the parties on the status of rubber tired automotive equipment such as trucks and the like under the notice and the repair and maintenance thereof;

at this meeting the representatives of the Burlington suggested a willingness on the railroad's part to have the repair and maintenance of non-licensed automotive equipment performed on its property by the shopcraft employees; this suggestion was subsequently withdrawn; also at this meeting the Burlington advised that it wanted all roadway equipment repaired under its engineering department by a composite mechanic who had the skills of all of the crafts embraced within the unions here involved; this was a new proposal by the railroad clearly not embraced in their Section 6 notice; there was also a discussion between the parties with respect to warranties and an argument between the parties about repair practices of the railroad; the unions were unable to secure any discussion or negotiation with the railroad about their Section 6 notice and particularly about the amendment of Article II of the agreement.

(35) On November 6, 1968, the union representatives conducted a meeting with the representatives of the Burlington at which the Mediator was present from approximately 1:00 p.m. to approximately 4:15 p.m.; during this meeting the railroad furnished some figures on employment desired by the unions, reiterated their desire for a composite mechanic to repair roadway equipment, stated that the warranty period on certain equipment covered two years or 200,000 miles; there was also a discussion between the parties on what constituted "minor items"; there was also a discussion between the parties on the unions' view that the Burlington had repeatedly failed to give notice to representatives of the unions as required by the 1964 agreement upon its intention to subcontract out its work; there was also some discussion between the parties on the portion of the Section 6 notice of the unions asking for an amendment to Section 14 of Article VI to provide penalty pay for carrier violations of the notice requirements; the union parties

were advised by Mr. Upton that the railroad did not agree with any such proposal.

(36) On November 7, 1968, the union representatives met among themselves from 9:00 a.m. until approximately Noon to discuss language possibilities or revisions that might be suggested to move the negotiations forward; between approximately 2:00 p.m. and 4:15 p.m. the union representatives met with the representatives of the Burlington and the Mediator; Mr. Egbers was present at this meeting; a substantial amount of time was taken up at this meeting reviewing and rehashing for Mr. Egbers' benefit what had gone before; at this meeting Mr. Egbers said flatly that the Burlington would not revise Article II of the 1964 agreement; that if a change in this provision took place the provisions of Article VI providing for a procedure to settle disputes on subcontracting would have to be junked; there was substantial discussion on the many claims filed for carrier violations of the subcontracting provisions of the 1964 agreement; and the experiences with respect to the Special Board of Adjustment; during this meeting Mr. Egbers took the position that a substantial amount of shopcraft work performed by the carrier was not under the classification of work rules of the shopcraft agreements; he included in this category the equipment purchased by the railroad from General Electric Company and roadway equipment; at this meeting Mr. Egbers indicated that the Burlington was willing to set down some guidelines with respect to the interpretation and application of the 1964 agreement with respect to subcontracting but provided nothing specific; once again, there was no negotiation on the part of the carrier with respect to the amendment of Article II other than the carrier's flat statement that it would not change Article II.

(37) On November 8, 1968, the union representatives met with the Mediator from 10:00 a.m. to Noon; during this meeting there was a general discussion on what had occurred up to that point; the Mediator suggested that the unions be satisfied with a memorandum of understanding on criteria to be applied in subcontracting without any change in Article II; the unions replied to the Mediator that under the circumstances they could not accept this suggestion as an adequate protection for the employees; from approximately 2:00 p.m. to 4:15 p.m. the union representatives met with the representatives of the Burlington at which the Mediator was present; once again, the union representatives were unsuccessful in attempting to get the representatives of the Burlington to discuss their Section 6 notice; all that the Burlington would do was reiterate its assertions that certain work was not covered by the work classification rules of the union organizations and their continued reiteration that they would not discuss revisions of Article II; at this meeting the Burlington representatives agreed that there could have been violations by the railroad of the contracting out provisions of the 1964 agreement, expressed a desire to correct those practices, but asserted that they would not entertain a change in the agreement as a method of doing so; the employee representatives requested the Burlington to provide them with a list of what it thought the employees could not or should not do; such a list was not supplied at that time or at any time in the future.

(38) On November 11, 1968, the representatives of the unions met with the representatives of the Burlington between approximately 10:30 a.m. and 12:15 p.m.; at that time the carrier made its first written proposal; a copy of this proposal is attached to this affidavit as Appendix A; this proposal suggested that there be no amendment to the subcontracting provisions of the

1964 agreement but that instead the parties execute a memorandum of understanding defining the term "minor transaction" as used in that agreement; the term "significantly greater costs" as used in that agreement; a requirement of advance notice with certain exceptions from the railroad of intent to subcontract out work covered by the work classification rules of the union parties; a list of the types of data that the Burlington would be required to furnish to union representatives under Article II in cases where no advance notice was given; discussions with union representatives on carrier intention to subcontract out work, with certain exceptions, not specifically set forth in the unions' classification of work rules but which is currently performed by employees covered by shop work rules, and which is not exclusively the work of another craft; employees furloughed at a particular point must accept employment offered them in their craft at other points or forfeit their seniority rights and terminate their employment relationship.

The carrier's proposal was discussed between the parties as to its meaning and purpose.

(39) On November 12, 1968, the union representatives met among themselves to discuss the railroad's proposal of November 11, 1968; this meeting lasted from approximately 9:30 a.m. to 4:15 p.m. It was apparent on the face of the matter that the carrier's proposal actually weakened the existing provisions of Article II of the subcontracting out provisions of the 1964 agreement although the Burlington purported to insist that it would not entertain a discussion on the amendment of that Article; except in minor transactions Article II already required advance notice of subcontracting out and the Burlington's proposal helped in no way any of the problems involved in the application of the 1964 agreement with respect to this matter; the remainder of the items were of a minor nature completely inadequate to protect employees and the public interest found by Emergency Board No. 160.

(40) On November 13, 1968, the union representatives again met between approximately 9:30 a.m. and 4:15 p.m. to discuss the railroad's proposals and the next step by the unions.

(41) On November 14, 1968, the union representatives participated in a meeting with the representatives of the Burlington from approximately 2:00 p.m. to approximately 4:15 p.m. at which the Mediator was present; at that meeting the union representatives informed the Burlington that the proposal voided the amendment of Article II and any matters of substance and that the unions regarded the so-called memorandum of understanding as proposed as completely useless with respect to the problems which had brought about the labor dispute in which the parties were engaged; the employee representatives therefore refused to accept a memorandum of understanding as a settlement of the issues between the parties as set forth in the Burlington's proposal; at the same time the representatives of the employees submitted to the Burlington a written proposal to govern the application of Article II of the mediation agreement of September 25, 1964, without the preamble contained in the notice, a proposal that such an understanding would dispose of the issues between the parties in their entirety; a copy of this proposal is attached as Appendix D to the Upton affidavit; in addition, the proposal of the union parties contained differences from that of the railroad on the interpretation or application of the existing agreement; these proposals were discussed; once again, the railroad made clear that it was not interested in discussing the Section 6 notice of the unions and a revision of Article II of the 1964 agreement.

(42) On November 15, 1968, the union representatives met from approximately 9:30 a.m. to approximately 4:15 p.m. to discuss the situation.

(43) On November 18, 1968, the union representatives met among themselves from approximately 9:30 a.m. to Noon to discuss the situation; between approximately 2:00 p.m. and 4:30 p.m. the union representatives engaged in a meeting with representatives of the Burlington at which the Mediator was present; at this meeting the union representatives furnished to the railroad a list of supporting data which the employees wanted furnished by the railroad with respect to any notice of railroad subcontracting and the reasons therefor covering various items in dispute; a true and correct copy of this list is attached hereto as Appendix B (the list furnished to the railroad did not include the handwritten notes which were made by a union representative during subsequent discussions); at this meeting the union representatives told the railroad that the purpose of their Section 6 notice was to improve Article II that all that the railroad had proposed so far in substance watered down the existing requirements of Article II; at this meeting on November 18th an agreement was reached on data to be furnished with respect to notice of carrier intent to contract out work; at the meeting on November 18th the Burlington did furnish a written proposal, a true and correct copy of which is attached hereto as Appendix C, which provided in substance that the existing provisions of Article II and Article VI of the 1964 agreement would remain in effect unchanged but revised a proposed memorandum of understanding between the parties on the application of that agreement; this memorandum of understanding also contained certain other items as set forth therein; finally, it proposed a moratorium on any proposals covering subcontracting of work until January 1, 1971.

(44) On November 19, 1968, the union representatives met among themselves from 9:30 a.m. to Noon to discuss the situation, including the carrier's proposal of the 18th; and from approximately 2:15 p.m. to 4:15 p.m. the union representatives

met with the representatives of the Burlington at which the Mediator was present; at this meeting the Burlington representatives took the position that no agreement had been reached on the data to be furnished the employees in cases of carrier notices of intent to contract out work; the Mediator rejected this statement and advised the representatives of the Burlington that they had reached such agreement on November 18, 1968; this was simply one more evidence of the railroad's bad faith in these negotiations.

At this meeting the representatives of the unions handed the Burlington representatives a written response to the carrier's proposal of November 18, 1968; a true and correct copy of this response is attached hereto as Appendix D ; it reads as follows:

"In response to Carrier's proposal of intended Mediation Agreement submitted to System Federation No. 95 during Mediation Meetings on Case A-8428, the Carrier has thus far seen fit to ignore the Union's Section Six Notice and Appendix 'A' of November 8, 1968 particularly dealing with the amendment of Article II of the September 25, 1967 Agreement; and this Federation cannot accept the Carrier's proposal which does not direct itself specifically to the intension of amending Article II. Therefore, the Federation has not changed their original intension expressed in the March 25, 1968. It is, however, understood that a tentative agreement and/or understanding has been reached between the Carrier and the Unions represented by System Federation No. 95, relative to the proposed data and the meaning of minor transactions which is presently expressed in the Unions' Notice (Appendix 'A'). Therefore, the Carrier's proposal of 11-18-68, page 4, section 7 in total, attempts to grant less to the Unions than already agreed to by the Carrier and the Unions in the present Article I of the September 25, 1964 Agreement. The Union has not served Notice to amend Article I or has it expressed an intension to change or rearrange Article I at this time.

"The Union considers the position of the present Carrier's Proposal dealing with Article I as untenable. The Union should not be expected to negotiate or accept less for our people than we were successful to get through many hours of negotiation which extended through Mediation and finally to Presidential Emergency Board No. 160. The Presidential Emergency Board No. 160 recognized the problem of the Union and need for the protection of jobs and earning power for the Railroad Employees represented by our Organization, which far exceeds what the Carrier now proposes and attempts to get by agreement at this time.

"In the rejection of your proposal of 11-18-68 we request that the Carrier respond specifically to our original proposal recognized as Appendix 'A' and negotiate from a posture of this understanding that Article II will be amended as proposed."

Also at this meeting the Burlington submitted a proposal in writing, a true and correct copy of which is attached hereto as Appendix E; once again, the Burlington purported to continue unchanged the subcontracting provisions of the 1964 agreement and proposed a memorandum of understanding on the application of the existing agreement to be applied to transactions after January 1, 1969; as will be seen from a reading of the carrier's proposal it provided that this was a final settlement of the dispute involved; that there be a moratorium of proposals covering subcontracting of work until January 1, 1971; the proposal also contained the following carrier threat:

"The above proposal by the Carrier is made in an effort to conclude negotiations in this dispute. If this proposal is not accepted by the Organizations, the Carrier reserves the right to further progress its March 29, 1968, proposals to a conclusion."

In other words, the railroad was telling the union representatives that unless the railroad's proposal of November 19, 1968, which did nothing about the substantive provisions of the existing agreement with respect to contracting out of work were accepted the railroad reserved the right to unilaterally put into effect its own Section 6 counter proposal when the procedures of the Railway Labor Act were completed, i.e. that the carrier would regard as eliminated all agreements, rules, regulations, interpretations, and practices which in any way interfered with the subcontracting out of work by the railroad as well as certain other actions by the railroad set forth therein. By this action the carrier set forth the first threat of self-help to accomplish its purposes by any party involved in the labor dispute, a purpose clearly repudiated by the findings and conclusions of Presidential Emergency Board No. 160, referred to above; faced with this threat

the union representatives would have been entirely justified both morally and legally in asking the Mediation Board at that time to relinquish jurisdiction of the labor dispute and leave the union parties to their own self-help after the lapse of the required 30-day period under the Railway Labor Act; by this action the Burlington itself put into the dispute the threat of self-help about which it now complains with respect to the union parties; it is difficult to perceive of a more cynical approach to good faith collective bargaining under the Railway Labor Act.

(45) On November 20, 1968, the union representatives met with the Mediator from approximately 10:00 a.m. to 12 Noon. The Mediator was advised that the unions desired to negotiate substantive amendments to Article II and Article VI of the collective bargaining agreement; that proposed memoranda of understanding with respect to the existing agreement were not adequate to protect the employees.

The unions informed the Mediator that the carrier should advise the Mediator and the union parties of what relief it would grant in a revised Article II and that this question could be discussed and negotiated; it was pointed out to the Mediator that the union representatives had repeatedly requested the carrier to advise them on this point and had been unable to get from the carrier any information with respect thereto.

(46) On November 21, 1968, the union representatives met with the representatives of the Burlington in a meeting at which the Mediator was present from approximately 1:00 p.m. to 3 p.m. At this meeting the Mediator reviewed the situation; once again the union representatives stated that they desired to negotiate substantive amendments to Article II and Article VI of the agreement; the Burlington representatives stated that they would not

negotiate such a revision, that if they were forced into negotiation of such a revision they would tear the whole agreement apart and eliminate the special procedures for the settlement of disputes.

The union representatives told the Mediator that in their opinion the carrier was refusing to negotiate in accordance with Section 6 notice of the parties.

The Burlington representatives then asked for a recess of 13 days or more; the representatives of the employees indicated their tentative opposition to such a recess but stated that they would give a definitive answer the next day.

(47) On November 22, 1968, the union representatives phoned the Mediator at approximately 11:30 a.m. and advised him that a recess in the negotiations was unacceptable to them; on that date the union representatives wrote to the National Mediation Board and requested that under the circumstances the parties be released from mediation; also on November 22, 1968, the National Mediation Board wired that the case was recessed without giving a date for further meetings.

(48) On December 3, 1968, Mr. Egbers of the Burlington wrote to the National Mediation Board objecting to a release of the case from mediation.

(49) On December 19, 1968, the unions involved again wrote to the National Mediation Board asking under the circumstances for the release of the case from mediation.

(50) On January 8, 1969, the National Mediation Board wired the unions involved that Mediator Peacock would resume mediation of the case on January 14, 1969.

(51) On January 14, 1969, the union representatives met with the Mediator from approximately 10:00 a.m. to 1:00 p.m.; at this meeting there was a complete review of the situation; the union representatives asked the Mediator if there were to be further conferences or meetings with the Burlington; the Mediator was told that in the opinion of the union representatives the Burlington

had not maintained the status quo as required by the provisions of the Railway Labor Act and that this failure had created an explosive situation among the employees involved.

(52) On January 15, 1969, the union representatives again met with Mediator Peacock from approximately 2:00 p.m. to 4:00 p.m.; Mediator Glover was also present at this meeting; at this meeting the mediators advised the union representatives that the situation was now a "new ball game", and that the mediators desired no further discussions on any previous problems.

The mediators also advised the unions involved that the Burlington was now ready to discuss some revision in Article II; the mediators also requested the unions involved to prepare and present a new proposal; the union representatives advised the mediator that they would go to work immediately on such a new proposal.

(53) On January 17, 1969, the union representatives gave to the mediators a new written proposal as requested at the meeting with the mediators on January 15, 1969, outlined above; a true and correct copy of this written proposal is attached as Appendix E to the Upton affidavit.

Contrary to any claims of the Burlington, this proposal did not forbid or prohibit the carrier from subcontracting out of work; to the contrary it recognized that the carrier might determine it "to be necessary" to subcontract work, but that if it did so such subcontracting could not be done until the Burlington had met the conditions set forth in a proposed Section 2 of a revised Article II; under this proposed Section 2 the carrier would be required to furnish to the respective General Chairman of the union whose work was involved an advance notice of the proposed subcontracting with supporting data; the General Chairman would then have the opportunity to sit down and discuss the matter with the Burlington; Section 2(b) of this proposal specifically provided that "If the parties are unable to reach an agreement at such conference the Carrier or the Organization may proceed

to process the dispute to a conclusion as hereinafter provided". This meant in accordance with the provisions of Article VI which the union proposal did not change; the proposal further contained provisions for the carrier to expand its existing facilities and to upgrade its facilities to perform the work involved; to recall furloughed shopcraft employees to perform the work; for overtime by employees on second and third shifts to perform the work; as well as a proposal with respect to apprentices involved in the work.

(54) On January 20, 1969, the employee representatives met with the representatives of the Burlington from approximately 2:00 p.m. to 4:45 p.m. at which meeting the mediator was present; at this meeting the Burlington submitted a letter to the employees reiterating their position that the issues raised by the Section 6 notice of the unions involved were not bargainable under the Railway Labor Act; in this letter the Burlington also stated that it was its desire to find an amicable settlement of the labor dispute but that this expression of desire should not be construed to mean that the Burlington accepted the Section 6 notice and the subject matter thereof as requiring bargaining under the Railway Labor Act. (Attached as Appendix F hereto.)

At this meeting the Burlington submitted a written proposal to the union representatives substantially similar to the Burlington's proposal of November 18th (Appendix E attached hereto).

Under this proposal the carrier essentially proposed the re-writing of the criteria for contracting out which was in essence simply a revision of its "memorandum of understanding" approach upon which it had insisted from the very beginning; the carrier also proposed to rewrite the provisions for the settlement of any disputes which arose at great length. At this meeting the union representatives also asked the Burlington to withdraw its letter of January 20, 1969, insisting that the subject matter of the unions' March 25, 1968, notice was not subject to required

bargaining under the Railway Labor Act; the union representatives stated to the Burlington representatives that they found it exceedingly difficult to believe that good faith bargaining could be conducted by the Burlington under the circumstances; the Burlington refused to withdraw its letter.

At this meeting the unions involved set forth their position on this point in the form of a written letter dated January 21, 1969, to Mr. Egbers, a true and correct copy of which is attached as Appendix G hereto.

This letter read in pertinent part as follows:

"The Organizations do not feel it necessary at this time to answer point by point all of the erroneous allegations raised in your letter. We may do so later.

"However, we do feel that your contention that this issue is non-bargainable and in violation of the Railway Labor Act must be answered.

"Your contention, if correct, and it is not, would mean that the carriers, the Organizations, the National Mediation Board and Emergency Board 160 were all in violation of the Railway Labor Act when Mediation Case A-7030 was negotiated and signed. Further if your contentions were correct, and they are not, then both the carrier and the Organization have been in violation of the Railway Labor Act since the issue involved in Mediation Case A-8428 was raised, and the National Mediation Board would have been in violation of the Law when this case was docketed and assigned a mediator. The absurdity of your contention is self-evident.

"The absurdity of your contention is further shown in the fact that the issue was not raised in your counter notice of March 29, 1968, nor at the first meeting held on April 25, 1968, and shown further in that, since the notices were served, and at various times in the course of these negotiations counter proposals have been exchanged."

(55) On January 22, 1969, the union representatives met with the representatives of the Burlington from approximately 2:00 p.m. to 4:00 p.m. to discuss the respective proposals of the parties; at this meeting the union representatives advised the representatives of the Burlington that they found the first two paragraphs of the carrier's written proposal of January 20, 1969, to be generally acceptable but that they could not accept the remainder as written.

Also at this meeting the union representatives asked the carrier to respond to the proposal of the unions furnished to the

mediator in response to his request of January 17, 1969; the unions were unable to obtain any discussion or negotiation with respect to their proposal; the Burlington representatives repeated their contention that the subject matter was non-bargainable under the Railway Labor Act; Mr. Egbers admitted once again that the Burlington had violated the existing agreement; however, he emphatically stated that the railroad did not intend under any circumstances to perform certain of its work; that it intended to end various work and shut down the shops involved.

Also on January 22, 1969, the Burlington furnished the unions with a written reply to the unions' letter of January 20, 1969; in the Burlington's letter of January 22, 1969, the Burlington reiterated its position that the subject matter involved in the Section 6 notice of the union was not subject to mandatory bargaining under the Railway Labor Act but denied that the railroad had not in good faith "conferred" with the unions on this subject; a true and correct copy of this letter is attached as Appendix H hereto.

(56) On January 23, 1969, the union representatives met with the mediator at approximately 10:00 a.m.; they advised the mediator that in their opinion the situation was hopeless in the light of the Burlington's attitude; that they would furnish him a letter on the subject matter at approximately 4:00 p.m.; this they did; a true and correct copy of this letter is attached as Appendix I hereto; this letter read in pertinent part as follows:

"The Carrier has facetiously stated to the Unions that irrespective of their position relative to bargainability of the union notice, they would proceed in discussions and they did exchange proposals and counter-proposals with the Unions on several occasions, however merely re-arranging the language in grammatical construction of their same original proposal. This continued to occur until November 18, 1968, when the Unions put the Carrier on notice in writing that we expected the Carrier to direct their discussions and negotiations to the Unions' proposal recognized as Appendix A of the March 25, 1968 Section 6 Notice. As a result of the Unions' letter to the Carrier, negotiations became stalemated and a recess was requested by the Carrier and granted by the National Mediation Board.

"During this period of recess the Carrier directed a letter to the Unions of their intent to further contract out two diesel units and other roadway equipment, which placed the entire negotiations in an impossible situation and certainly a complete disregard for the spirit and intent of the status quo under the Railway Labor Act.

"Because of these delinquent and arrogant acts of the Carrier, the Railway Employees' Department on request of the Unions of System Federation #95 directed a letter under date of November 22, 1968 to the National Mediation Board pointing up these facts and requested that the Mediation Board close their files on this instant case.

"For reasons not known to the officers of System Federation #95, the National Mediation Board under date of January 8, 1969, notified all parties concerned that mediation would re-convene. Since the re-convening of mediation up to this instant date, the Unions have met with the Mediator in executive session on January 14, 15, 16 and 17th. Further, they have met jointly with the Mediator and Carrier on January 20, 21, and 22.

"During these joint mediation sessions, the Carrier again submitted to the Unions the same proposal in context as their November 18, 1968 proposal along with a letter directed to the Federation in which they completely rejected the Unions' original proposal which is recognized as Appendix A of the March 25, 1968 Notice, as well as a flat verbal statement by Mr. Egbers, Assistant to the President of the CB&Q, that the Carrier did not intend to negotiate any kind of an agreement that would put them back in the manufacturing business of any parts, even those which they have manufactured in the past. The Union considers the making of parts on the Carrier property as an intricate part of the total dispute dealing with the contracting out of Shop Craft work. This position on the part of the Carrier places our entire mediation efforts back to the very first day of October 24, 1968.

"On the other hand, the unions have acted in good faith by revising their proposal as it refers to the original Appendix A and the amending of Article II, Section 2 of the 1964 Agreement, and attempted on more than several occasions to meet all the Carrier's objections, however even these efforts were totally rejected by the Carrier.

"Therefore, it is our Federation's opinion and firm position that any further meetings or negotiations with the Carrier would be a vain and useless effort and a total waste of time in an attempt to relieve the pressures of our membership on this Carrier property.

"We are again requesting that you report these facts to the National Mediation Board officers and recommend that the Mediation Board release this entire issue and close their files on Case A-8428."

(57) On January 29, 1969, the National Mediation Board, acting pursuant to the provisions of Section 5, First of the Railway Labor Act, wrote to both parties requesting them to enter into an agreement to voluntarily submit their labor dispute to arbitration pursuant to Section 8 of the statute; a true and correct copy of which is attached as Appendix J hereto.

Under date of January 31, 1969, the Railway Employees' Department, acting on behalf of the unions involved, wrote to the National Mediation Board stating in pertinent part that "We have given serious consideration to your request and regret to advise that in view of the issues involved in the dispute, we must respectfully decline to submit the controversy to arbitration as you have requested"; a true and correct copy of this letter is attached as Appendix K hereto.

Under date of February 8, 1969, Mr. Egbers, on behalf of the Burlington, wrote to the National Mediation Board stating in pertinent part that "This Carrier would have been willing to submit this controversy to arbitration as suggested in your letter of January 29, 1969, if an agreement on the issues to be arbitrated could have been reached"; this conditional response was, of course, meaningless in light of the Burlington's repeated position that the subject matter of the March 25, 1968, Section 6 notice of the unions was not a subject that required bargaining under the Railway Labor Act, a position which it had reiterated only shortly before the letter of February 8, 1969; a true and correct copy of this letter of Mr. Egbers is attached as Appendix L hereto.

(58) On February 4, 1969, the National Mediation Board wrote to the parties stating in pertinent part that "It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement"; the Board therefore served notice on the parties that it had that day terminated its services under the provisions of the Railway Labor Act; the communication also called the attention of the parties to the fact that for 30 days thereafter the statute required that no change be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time that the dispute arose; a true and correct copy of this communication is attached as Appendix M hereto.

Under the provisions of the Railway Labor Act, the unions were free to resort to self-help with respect to their side of the dispute not later than March 6, 1969, unless a Presidential Emergency Board could be created to investigate and report on the dispute pursuant to the provisions of Section 10 of the Railway Labor Act during the intervening period.

(59) On February 18, 1967, Mr. Egbers asked the unions involved for further conferences beginning February 27, 1969; the unions involved agreed.

On February 18, 1969, the unions involved wrote to Mr. William J. Quinn, President of the Burlington, calling his attention to the union view that during the conferences between the parties the carrier had repeatedly violated provisions of the existing agreement; that the abuses during mediation were so prevalent and obvious that Mr. Egbers had written a letter to carrier officers on November 19, 1968, advising compliance with the agreement; the unions further advised Mr. Quinn that in spite of Mr. Egbers' letter the abuses had continued to the detriment and anger of the employees involved; the letter pointed out that the carrier's action was in violation of the Railway Labor Act and "makes collective bargaining a farce and completely hopeless"; a true and correct copy of this letter is attached as Appendix N hereto.

(60) On February 27, 1969, the union representatives met with the representatives of the Burlington in the Burlington's offices in Chicago, Illinois, to discuss the situation; at this meeting the Burlington made no change in its position; indeed, some of its suggestions consisted of a withdrawal of some suggestions previously made such as the suggestion made at one point in prior discussions that work performed on non-licensed equipment could be performed by employees represented by the unions; during these discussions Mr. Egbers' attention was called to the fact that at the first conference of the union parties with him they had complained of the Burlington's violations of the existing agreement;

that he had agreed that there were such violations, but these had continued; the union parties also advised Mr. Egbers that during the February meetings of railroad officials and the railway labor organizations in Miami, Florida, the President of the Northern Pac. Ry. had told Mr. Fox, President of the Railway Employees' Department, AFL-CIO, that the employees on the Burlington were trying to prevent the railroad from buying locomotives and were insisting that the railroad build its own locomotives and that Mr. Fox had assured Mr. Menk that this was not the case; the unions representatives complained to Mr. Egbers that someone had misled Mr. Menk; Mr. Egbers said that if the presidents of railroads would keep their noses out of labor business the labor experts could settle disputes.

This meeting adjourned for dinner; it resumed after dinner; at that time Mr. Egbers refused to discuss the subject matter of the conference in any way, shape or form; instead, he spent the time attempting to entertain the individuals present with jokes; the union representatives repeatedly asked him questions concerning the subject matter of the conference which he refused to answer.

(61) On March 4, 1969, the union representatives and the Burlington representatives again met; at this meeting Mr. Paul Marnell, of the Railway Employees' Department, AFL-CIO, was also present; he had been requested to be present at such conferences by the President of the RED, AFL-CIO; most of the time at this conference was spent reviewing the dispute from its onset, the procedures for the settlement of disputes on subcontracting out of work and the decisions of the Special Board under the existing agreement.

Mr. Marnell advised the Burlington representatives that the carrier had emasculated the existing agreement so far that it was ineffectual; at this meeting there was a discussion of purchasing of freight cars and the union's position that the carrier should

continue doing work on its property that it had been doing; at this meeting Mr. Egbers suggested the possibility that if the employees were interested simply in additional job protection the Burlington would discuss this with them.

(62) On the morning of March 5, 1969, Mr. Marnell met alone with Mr. Egbers of the Burlington; at this meeting Mr. Egbers advised Mr. Marnell that he was tied up in another meeting and suggested that the union representatives met with the Burlington staff officers; during this discussion with Mr. Marnell, Mr. Egbers mentioned the matter of possible job guarantees and an attrition agreement as a means of protecting the employees.

Before meeting with the carrier representatives, the union representatives discussed Mr. Egbers' suggestions among themselves and concluded that this matter should be explored to find out exactly what the Burlington had in mind; at approximately 2:00 p.m. on March 5, 1969, the union representatives met with the Burlington representatives, with Mr. Marnell again present, and again discussed the situation and asked for something in writing on Mr. Egbers' suggestions.

(63) On March 6, 1969, the date upon which the unions were free to strike under the Railway Labor Act, the union representatives and the representatives of the Burlington met at approximately 2:00 p.m. with Mr. Marnell again present.

At this meeting the union representatives discussed with Mr. Egbers the carrier proposal of January 20, 1969, particularly with respect to the cost factors set forth in that proposal; Mr. Egbers replied that he did not know too much about the cost factors since they had been prepared and developed by someone else.

At this meeting union representatives asked for something in writing on the suggestion originally made about the possibility of job guarantees.

(64) On March 7, 1969, a meeting was held between union representatives and the representatives of the Burlington beginning at approximately 2:00 p.m.; at this meeting the Burlington furnished

to the representatives of the unions a proposal to cancel out the provisions of Article I of the September 1964 agreement covering the matter of employee protection; providing for the recognition by the employees of an absolute right of the carrier to purchase any new equipment and component parts; providing for a recognition by the employees of an absolute right of the carrier to introduce technical and operational changes; and further providing for an agreement by the carrier that it would not reduce positions below an established base set forth in the agreement to exceed 5% per annum, the established base to be the number of employees holding regularly assigned positions on the effective date of the agreement, and employees at the Aurora shop returned to service pursuant to Section 4 of the agreement; as indicated the proposal suggested the return to work of employees of the Aurora shop; the proposal also contained a matter relating to the classification of work rules and limiting the Special Board established by Article VI to disputes arising under Article III; a true and correct copy of this agreement is attached as Appendix O hereto (the inked notations are those of a union representative).

(65) On March 8, 1969, the representatives of the unions and representatives of the Burlington met at 9:00 a.m. and discussed the Burlington's proposal of March 7, 1969; the union representatives asked questions and suggested concerns and problems about such proposal but did not reject it outright.

At this meeting the union representatives submitted a counter proposal; this was done by drawing lines through various provisions of Article II; the effect of this proposal was to eliminate all of Section 1 of the 1964 agreement, i.e. the applicable criteria for subcontracting work; to strike out the reference in Section 2 to these criteria so that Section 2 then read that if the carrier decides that "it is necessary to subcontract work of a type currently performed by the employees", it shall give notice of intent to the General Chairman, supporting data, and will discuss the matter

with the affected General Chairman; the proposal left undisturbed the provisions of Section 2 that "If the parties are unable to reach an agreement at such conference, the Carrier may, notwithstanding, proceed to subcontract the work, and the Organization may process the dispute to a conclusion as hereinafter provided". This proposal left in effect Section 3 of the 1964 agreement and Section 4 which set up the machinery for resolving disputes over contracting out of work.

The railroad asked the union representatives numerous questions about their proposal; the railroad representatives expressed concern that in a dispute over whether or not it was necessary for the Burlington to subcontract out work that it could not rely upon the criteria in Section 1 in light of the "legislative history" of this Section and of the dispute; the carrier suggested that the employees amend this proposal before further consideration, so as not to bar the carrier from reliance upon this criteria in such a dispute; the union representatives advised the representatives of the railroad that such an amendment would defeat the entire purpose of their March 8th proposal which was to get away from the criteria that they felt had been abused by the railroad and to leave it to the railroad to support any subcontracting out of work believed to be necessary in accordance with whatever could be used to support such subcontracting without regard to the particular criteria.

The meeting of March 8, 1969, broke up without any agreement or without any commitments by either party.

Mr. Marnell indicated to the railroad representatives that they meet on March 10, 1969.

(66) On March 10, 1969, the representatives of the union met with the representatives of the Burlington at approximately 2:00 p.m.; at this meeting there was further discussion of the employees' proposal of March 8th; during the course of this discussion the Burlington indicated that it could not agree on the elimination of the criteria under Section 1 of Article I of the 1964 agreement.

When this meeting broke up on March 10, 1969, Mr. Marnell indicated to the Burlington representatives a willingness to meet again on March 11, 1969.

(67) On March 11, 1969, the union representatives met among themselves at approximately 10:00 a.m. to review the situation; the discussion among them revealed that they were in agreement that the conferences which had taken place since the National Mediation Board had terminated mediation on February 4, 1969, had not brought the parties any closer to agreement and had not made any substantial contribution toward a settlement; there was further discussion as to what action the union representatives could take; this meeting concluded on March 11th without the union representatives reaching a decision with respect to appropriate action.

(68) On March 12, 1969, the railroad filed its complaint in this Court for injunctive relief; the allegations contained in that complaint and the statements in the affidavits submitted in support thereof have, in the opinion of the union representatives, made it clear that the Burlington has never had any intention of negotiating an effective agreement with respect to the subcontracting of work and that a lawful recourse to self-help is the only course of action available to the unions and the employees they represent under these circumstances.

Each of the affiants hereinbefore named states that the above represents his individual affidavit reciting the facts within his own knowledge and belief and each subscribes his name hereto this 25th day of March 1969.

Paul Marnell

Paul Marnell, Assistant to President
Railway Employees' Department, AFL-CIO

E. J. Hayes

E. J. Hayes, President
System Federation 95
General Chairman, Sheet Metal Workers
International Association

G. R. DeHague

G. R. DeHague, Secretary-Treasurer
System Federation 95
General Chairman, International Association of Machinists and Aerospace Workers

M. J. Jewett

Michael Jewett, Vice General Chairman
International Brotherhood of Firemen
& Oilers

A. L. Kohn

Arthur Kohn, General Chairman
International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths,
Forgers and Helpers

Subscribed and sworn to before me
this 25th day of March, 1969

Louise Peck

Notary Public

My Commission expires: Nov. 30, 1972

W. J. Peck

W. J. Peck, General Chairman
International Brotherhood of Electrical
Workers

N. G. Robison

N. G. Robison, General Chairman
Brotherhood Railway Carmen of the United
States and Canada

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, et al.,

Defendants.

CIVIL ACTION

NO. 630-69

Defendants' exhibits accompanying defendants' affidavit.

APPENDIX A - 2 pages
B - 2 pages
C - 4 pages
D - 1 page
E - 6 pages
F - 4 pages
G - 2 pages
H - 2 pages
I - 2 pages
J - 2 pages
K - 1 page
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O - 7 pages

MEDIATION CASE A-8428

CB&Q Proposal
11/11/68

Provided the Organizations' Notice of March 28, 1968 will be disposed of in its entirety and provided new notices dealing with the subject of subcontracting will not be instituted by them prior to January 1, 1971, the Carrier proposes the following:

1. Provisions of Mediation Agreement A-7030 dated September 25, 1964 will remain in effect unchanged, including Article II - Subcontracting - and Article VI - Resolution of Disputes - thereof.

2. The Carrier will enter into a Memorandum of Understanding with the Organizations to govern application of Article II of Mediation Agreement A-7030 on and after January 1, 1969. Such Memorandum of Understanding will include, but not necessarily be limited to, the following:

(a) A definition of the term "minor transaction" as that term is used in Article II, Section 2, for which no advance notice will be required.

(b) A definition of "significantly greater cost" as that term is used in criteria 5 of Article II, Section 1.

(c) A requirement that the Carrier will give advance notice to the Organizations of its intent to contract out work set forth in their classification of work rules (except for minor transactions).

APPENDIX A

(d) A list of the types of data that the Carrier will be required to furnish the Organizations pursuant to Article II, Section 2, and Section 3 in cases where no advance notice is given.

3. Before the Carrier contracts out work (except for minor transactions) not specifically set forth in the Organizations' classification of work rules but which is currently being performed by them and which is not exclusively the work of another craft, it will discuss the matter with the Organization or Organizations involved.

4. Employees furloughed at a particular point must accept employment offered them in their craft at other points or forfeit their seniority rights and terminate their employment relationship.

11/18/60

Reasons thereof and supporting data shall be understood to include but not be limited to :

1. Copies of contractors bids broken down into man hours, labor charges, shop overhead, material costs and specific work performed.
2. Blueprints - Drawings - sketches, specifications, manufactures discription Model # & any other information which will properly describe or identify the job, equipment, parts, or units involved & covered by this Agreement.
3. Purchase Agreements containing warrenties and guarantees return exchange options or rights, reciprocal agreements with Manufacture's, other Rail Carriers dealing with leasing of or exchange of Locomotives, Cars, Roadway Equipment, Communication's Equipment & Electrical Equipment between the C.B. & Q & any other Carrier or Carriers - (or) Companies or Business. Copy of, and full explanation of any options under the warrantee or guarantee. NOTE: It is understood that no warrantee or guarantee shall exceed two years or 100,000 miles, *WHICHEVER COMES FIRST,*
4. Copy of Carrier's purchase orders with specifications and cost of labor and materials.
5. Specific data relative to guarantees as to job completion and placed in service on the Carrier. And actual date placed in service on the guarantee.
6. Copy of invoices received from the subcontractor relative to the transaction, ~~BROKEN DOWN INTO LABOR CHARGES~~
MAN HOURS AND SPECIFIC WORK PERFORMED.
7. Machinery, tools, gauges & any other technical devices actually need to accomplish the manufacturing, building, repairing, refurnishing, modifying, improving of the article, object, part or unit involved in said transaction or under question or dispute.

APPENDIX B

NOTE: The disposing of property, buildings, machines, tools, or equipment, whole or in part of the furloughing of employes within the Craft or Class shall not be considered proper data or excuse for contracting out of work whole or in part.

M E D I A T I O N A G R E E M E N T

Case No. A-8428

This Agreement made this _____ day of _____, 1968 by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railways Employees Department, AFL-CIO.

IT IS AGREED:

1. The provisions of Mediation Agreement A-7030 dated September 25, 1964 shall remain in effect on the Chicago, Burlington & Quincy Railroad Company unchanged, including Article II - Subcontracting - and Article VI - Resolution of Disputes - - thereof.

2. Effective January 1, 1969, Article II of Mediation Agreement A-7030 shall be applied on this Carrier as hereinafter provided, except that this Agreement will have no application to transactions subject to Article II of Mediation Agreement A-7030 which were instituted prior thereto.

3. The terms "Minor transactions" and "significantly greater cost" used in Article II of Mediation Agreement A-7030 shall have the following meanings in their application to transactions on the CB&Q. The parties to this Agreement do not in any way imply by defining these terms that such definitions reflect their true meaning as they were used in Mediation Agreement A-7030 by the negotiators thereof.

(a) "Minor Transactions"

Transactions requiring sixteen (16) hours' work or less to perform.

APPENDIX 8C

4. Notwithstanding anything to the contrary contained in the collective agreement between the parties and/or Mediation Agreement A-7030, the Carrier has the right to contract out work in emergency situations without prior notice to or consultation with the Organizations signatory hereto. The term "emergency situations" as used herein is defined as follows:

An unforeseen combination of circumstances or the resulting state which calls for prompt immediate action involving safety of the public, employes and carrier's property or avoidance of unnecessary delay and expense to carrier's operations.

5. The Carrier, party hereto, will in good faith comply with the notice requirements of Article 11, Section 2, of Mediation Agreement A-7030, and will supply the Organizations with "supporting data" in accordance with Article 11, Sections 2 and 3, thereof. Such "supporting data" will include the following, if available:

- (a) Copies of bids.
- (b) Copies of invoices.
- (c) Blueprints or drawings.

6. If the Carrier, party hereto, desires to contract out work (except for minor transactions and in emergency situations) not specifically set forth in the Organizations' classification of work rules but which is currently being performed

by them and which is not exclusively the work of another craft, it will serve notice in accordance with Article 11, Section 2 of Mediation Agreement A-7030 and will discuss the matter with the Organizations involved provided they make a request therefor. This in no way means that such contracting out of work is subject to Article 11 of such Agreement.

7. (a) System-wide rosters of furloughed employees will be maintained by crafts. Such rosters will contain the names of all furloughed employees, job classifications, seniority point and date furloughed.

(b) If the Carrier is unable to fill a position in a certain craft at a particular location without hiring a new employee, such vacancy will be offered in seniority order to furloughed employees whose names appear on rosters made pursuant to paragraph (a) hereof.

(c) If there are no applications for the position from furloughed employees, the junior furloughed employee in the particular craft will be required to accept such position or forfeit all seniority and employment rights. *out*

(d) An employee who transfers to a new point of employment will have his seniority dovetailed into such seniority district and will forfeit his seniority in the seniority district from which transferred. In the event the employee transferring with his seniority has the same date as an employee already on the Seniority District to which transferred, the employee transferring will rank below such employee.

(e) An employee who transfers to a new point of employment pursuant to this Agreement which is in excess of 35 normal route miles from his former work location, but which is not closer to his residence than his former work location, and as a result thereof moves his place of residence, will receive the benefits of Article 1, Sections 9 and 10, of Mediation Agreement A-7030.

(f) An employee transferring to a new point of employment pursuant to this Agreement, regardless of whether or not he is required to move his place of

residence, shall receive the benefits contained in Article 1, Sections 5 and 6, of Mediation Agreement A-7030.

8. This Agreement is in full and final settlement of the dispute growing out of the Organizations' March 25, 1968 Notice and the Carrier's March 29, 1968 Notice served on the Organizations for concurrent handling therewith.

9. The provisions of this Agreement shall become effective January 1, 1969, and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended. Section 6 notices will not be initiated by any party to this Agreement covering subcontracting of work prior to January 1, 1971.

SIGNED AT CHICAGO, ILLINOIS, THIS _____ DAY OF _____, 1968.

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The above proposal by the Carrier is made in an effort to conclude negotiations in this dispute. If this proposal is not accepted by the Organizations, the Carrier reserves the right to further progress its March 29, 1968 proposals to a conclusion.

System Federation No. 95

Mediation Case A-8428
Response to CB&Q Proposal 11-18-68

In response to Carrier's proposal of intended Mediation Agreement submitted to System Federation No. 95 during Mediation Meetings on Case A-8428, the Carrier has thus far seen fit to ignore the Union's Section Six Notice and Appendix "A" of November 8, 1968 particularly dealing with the amendment of Article II of the September 25, 1967 Agreement; and this Federation cannot accept the Carrier's proposal which does not direct itself specifically to the intension of amending Article II. Therefore, the Federation has not changed their original intension expressed in the March 25, 1968. It is, however, understood that a tentative agreement and/or understanding has been reached between the Carrier and the Unions represented by System Federation No. 95, relative to the proposed data and the meaning of minor transactions which is presently expressed in the Unions' Notice (Appendix "A"). Therefore, the Carrier's proposal of 11-18-68, page 4, section 7 in total, attempts to grant less to the Unions than already agreed to by the Carrier and the Unions in the present Article I of the September 25, 1964 Agreement. The Union has not served Notice to amend Article I or has it expressed an intension to change or rearrange Article I at this time.

The Union considers the position of the present Carrier's Proposal dealing with Article I as untenable. The Union should not be expected to negotiate or accept less for our people than we were successful to get through many hours of negotiation which extended through Mediation and finally to Presidential Emergency Board No. 160. The Presidential Emergency Board No. 160 recognized the problem of the Union and need for the protection of jobs and earning power for the Railroad Employees represented by our Organization, which far exceeds what the Carrier now proposes and attempts to get by agreement at this time.

In the rejection of your proposal of 11-18-68 we request that the Carrier respond specifically to our original proposal recognized as Appendix "A" and negotiate from a posture of this understanding that Article II will be amended as proposed.

APPENDIX D

M E D I A T I O N A G R E E M E N T

Case No. A-8428

This Agreement made this _____ day of _____, 1968 by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railway Employees Department, AFL-CIO.

IT IS AGREED:

1. The provisions of Mediation Agreement A-7030 dated September 25, 1964 shall remain in effect on the Chicago, Burlington & Quincy Railroad Company unchanged, including Article II - Subcontracting - and Article VI - Resolution of Disputes - thereof.

2. Effective January 1, 1969, Article II of Mediation Agreement A-7030 shall be applied on this Carrier as hereinafter provided, except that this Agreement will have no application to transactions subject to Article II of Mediation Agreement A-7030 which were instituted prior thereto.

3. The terms "minor transactions" and "significantly greater cost" used in Article II of Mediation Agreement A-7030 shall have the following meanings in their application to transactions on the CB&Q. The parties to this Agreement do not in any way imply by defining these terms that such definitions reflect their true meaning as they were used in Mediation Agreement A-7030 by the negotiators thereof.

(a) "Minor Transactions." Transactions requiring sixteen (16) hours' work or less to perform.

CC *John*

APPENDIX E

(b) "Significantly Greater Cost." The following table will be used in determining "significantly greater cost":

<u>Estimate of Labor Charge by Contractor</u>	<u>Significantly Greater Cost if Work Performed on Property</u>
Less than \$1,000	6% of contractor's estimated labor charge
\$1,000 and less than \$5,000	5% of contractor's estimated labor charge
\$5,000 and less than \$10,000	4% of contractor's estimated labor charge
\$10,000 and less than \$50,000	3% of contractor's estimated labor charge
\$50,000 and less than \$100,000	2% of contractor's estimated labor charge
\$100,000 and over	1% of contractor's estimated labor charge

The estimate of labor charge by the contractor will be based on figures furnished at the time a bid is submitted by it.

The estimate of labor cost for performing the work on the property will be computed in the following manner:

No of hours to perform work X rate of pay of
employees to be used + 75% (Shop Overhead) + 10% (Super-
vision) + 25.02% (Fringe Benefits).

NOTE: Percentage figures are based on percentage currently
in effect and are subject to adjustment.

A determination that work cannot be performed by the Carrier except at a
significantly greater cost will be made in accordance with the following example:

Estimated Labor Cost by Contractor	<u>\$4,600.00</u>
Estimate of No. of hours to perform work on property:	
Machinists 400 Hours @ 3.5994	\$1,439.76
Electricians 150 hours @ 3.5994	539.91
Helpers 100 hours @ 3.0037	<u>300.37</u>
	\$2,280.04
Shop Overhead (75%)	\$1,710.03
Supervision (10%)	228.00
Fringe Benefits (25.02%)	<u>570.47</u>
	<u>\$4,788.54</u>
Difference between labor charge by contractor and labor cost for performing work on property	\$ 188.54
Significantly greater cost from above table	\$ 230.00

(Accordingly, work could not be subcontracted under the cost criteria inasmuch as the cost of performing the work on the property is not "significantly greater".)

4. Notwithstanding anything to the contrary contained in the collective agreement between the parties and/or Mediation Agreement A-7030, the Carrier has the right to contract out work in emergency situations without prior notice to, or consultation with, the Organizations signatory hereto. The term "emergency" as used herein is defined as follows:

An unforeseen combination of circumstances or the resulting state which calls for prompt or immediate action involving safety of the public, employees and Carrier's property or avoidance of necessary delay and expense to Carrier's operations.

5. The Carrier, party hereto, will in good faith comply with the notice requirements of Article 11, Section 2, of Mediation Agreement A-7030, and will supply the Organizations with "supporting" data in accordance with Article 11, Sections 2 and 3, thereof. Such "supporting data" will include the following where applicable to the particular transaction:

(a) Sub-contractor's bid broken down into man hours, labor charges, shop overhead, material costs and specific work performed.

(b) Blueprints, drawings, sketches, specifications, manufacturer's model number and any other information which will properly describe or identify the job, equipment, parts, or units involved in the particular transaction.

(c) Purchase agreements containing warranties and guarantees, return exchange options or rights, reciprocal agreements with manufacturers, and other rail carriers dealing with leasing or exchange of locomotives, cars, roadway equipment, communication and electrical equipment.

(d) Carrier's purchase orders with specifications and cost of labor and materials.

(e) Information relative to estimated completion date and actual date completed by Contractor.

(f) Invoices received from the subcontractor relative to the transaction.

(g) List of special machinery, tools, gauges and any other technical devices needed to perform the work involved in the transaction.

6. If the Carrier, party hereto, desires to contract out work (except for minor transactions and in emergency situations) not specifically set forth in the Organizations' classification of work rules but which is currently being performed by them and which is not exclusively the work of another craft, it will serve notice in accordance with Article 11, Section 2, of Mediation Agreement A-7030 and will discuss the matter with the Organizations involved provided they made a written request therefor. This in no way means that such contracting out of work is subject to Article 11 of such Agreement. This paragraph does not preclude the Organizations from progressing claims based upon their contention that the work in question is covered by their classification of work rules.

7. (a) System-wide rosters of furloughed employees will be maintained by crafts. Such rosters will contain the names of all furloughed employees, job classifications, seniority point and date furloughed.

(b) If the Carrier is unable to fill a position in a certain craft at a particular location without hiring a new employee, such vacancy may be offered to furloughed employees whose names appear on rosters made pursuant to paragraph (a) hereof.

(c) If there are no applications for the position from furloughed employees, the junior furloughed employee in the particular craft who holds seniority at the location nearest to such position will be required to accept the position or forfeit all seniority and employment rights.

(d) An employe who transfers to a new point of employment will acquire new seniority on the seniority roster to which transferred and will retain his seniority on the roster from which transferred.

(e) An employe who transfers to a new point of employment pursuant to this Agreement which is in excess of 35 normal route miles from his former work location, but which is not closer to his residence than his former work location, and as a result thereof moves his place of residence, will receive the benefits of Article 1, Sections 9 and 10, of Mediation Agreement A-7030.

(f) An employe transferring to a new point of employment pursuant to this Agreement, regardless of whether or not he is required to move his place of residence, shall receive the benefits contained in Article 1, Sections 5 and 6, of Mediation Agreement A-7030.

(g) An employe who transfers to a new point of employment pursuant to this paragraph 7 will not be required to transfer back to his original point of employment so long as he can hold a regular assignment at his new work location. He may, however, return voluntarily to his original point of employment to accept a permanent vacancy, in which event he will no longer be entitled to the benefits provided by paragraph (f) hereof and will not receive the benefits provided in paragraph (e) herein, for such move.

8. This Agreement is in full and final settlement of the dispute growing out of the Organizations' March 25, 1968 Notice and the Carrier's March 29, 1968 Notice served on the Organizations for concurrent handling therewith.

9. The provisions of this agreement shall become effective January 1, 1969 and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended. Section 6 notices will not be initiated by any party to this Agreement covering subcontracting of work prior to January 1, 1971.

SIGNED AT CHICAGO, ILLINOIS THIS _____ DAY OF _____, 1968.

The above proposal by the Carrier is made in an effort to conclude negotiations in this dispute. If this proposal is not accepted by the Organizations, the Carrier reserves the right to further progress its March 29, 1968 proposals to a conclusion.

BURLINGTON LINES

Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
Fort Worth and Denver Railway Company

A. E. EGNERS
Asst. to the President
G. M. YOUNG
Director of Labor Relations



LABOR RELATIONS AND EMPLOYMENT DEPARTMENTS
347 West Jackson Boulevard - Chicago, Illinois 60606

C. J. MAHER
E. J. CONLIN
J. D. DAWSON
H. C. LOUCKS
B. G. UPTON
Staff Officers
J. GILLETTE
Supv. of Employment
R. W. TODD
Personnel Officer

January 20, 1969

Shops 2016-68

✓ Mr. E. J. Hayes
President
System Federation No. 95
General Chairman, SMWIA
Aurora, Illinois

Mr. G. R. DeHague
Secretary-Treasurer
System Federation No. 95
General Chairman, IAM&AW
Burlington, Iowa

Mr. A. L. Kohn
General Chairman, IBBISBBF&H
Milwaukee, Wisconsin

Mr. C. H. Long
General Chairman, IBF&O
Tacoma, Washington

Mr. W. J. Peck
General Chairman, IBEW
St. Paul, Minnesota

Mr. N. G. Robison
General Chairman, BRCA
Lincoln, Nebraska

Gentlemen:

Reference is made to your Section 6 notice dated March 25, 1968 to amend Article 11 Subcontracting, and Article VI of the National Agreement and our proposals dated March 29, 1968 served on the Organizations for concurrent handling therewith, which was docketed by the National Mediation Board as Case No. A-8428.

During handling of this dispute in direct negotiations and in mediation under the auspices of Mediator Charles A. Peacock, the Carrier has taken the position that your March 25, 1968 notice is improper and non-bargainable under the Railway Labor Act. Nevertheless, we have continued to meet with you and Mediator Peacock, without waiving such position, in an effort to find a solution to this matter in the interest of maintaining a harmonious relationship with you and the employees of this Carrier which you represent. Thus far, we have not been able to find that solution.

I believe it is appropriate at this time to fully set forth in a written communication why we are still maintaining the position that your notice is non-bargainable under the Railway Labor Act, although I can assure you that this letter is not intended to alter the fact that it is our desire and hope that these mediation sessions in which we are now engaged will bring about a peaceful and conclusive settlement of this dispute. We will continue to use our best efforts toward this result.

- 1 -

APPENDIX F

all through these negotiations we have been talking about Rules & Working Conditions

Section 6 of the Railway Labor Act provides that a carrier or carriers and representatives of its or their employees may serve written notice of intention to change agreements "affecting rates of pay, rules, or working conditions." Any notice which does not confine itself to "rates of pay, rules, or working conditions" is outside the scope of the Railway Labor Act and is improper under Section 6 thereof. There are several reasons why your Section 6 notice is improper and non-bargainable under the Act, each of which will be discussed below:

1. The organizations' March 25, 1968 notice would place a prohibition against the carrier from contracting out any work, that either comes within the classification of work rules or is "generally recognized as work of the craft or crafts" involved, regardless of the circumstances and regardless of whether or not the carrier had the facilities, manpower or equipment necessary to perform the work, without concurrence of the organization or organizations involved in each instance. The same would also apply to "the unit exchange, purchase of new equipment, component parts, or leased equipment, the manufacturing, repairing and rebuilding of which is work" set forth in the classification of work rules or generally recognized as being work of the craft or crafts involved. It has been readily admitted by you during negotiations and mediation that your notice would even preclude the carrier from purchasing a new locomotive without concurrence of the organizations.) The same thing would apply to rolling stock and other types of equipment, and component parts thereof. (Your notice is an attempt to usurp legitimate managerial prerogatives in the exercise of business judgment with respect to the most economical and efficient conduct of its operations and the obvious effect of such notice would be to take this carrier substantially out of the market place and would restrain its ability to compete freely for goods and services on a competitive basis with other carriers and other modes of transportation.) *—? lie not so*

2. Your March 25, 1968 notice proposes to delete the provision in Section 14 limiting recovery in case of a proven violation to actual damages, and to substitute in its place a provision that would require a carrier to pay a claimant or claimants named by the organizations for the amount of time it would have taken them to perform work on the property regardless of whether or not such claimants would have been the employees who would be entitled to the work had it not been subcontracted. In other words, your proposal would provide that a claimant designated by the organizations not only would not be required to prove that he was actually damaged by a wrongful failure of the carrier to use him on certain work, he would not even have to prove that he

answered by awards 36437

would in fact have been used on that work if the carrier had performed it on the property. All that would be required is that the organization designate him as the claimant, however arbitrary that designation might be and regardless of how much he might have earned from other employment which he could not have earned if he had been used to perform the work in question.

Moreover, your notice would provide that there would be "no time limits of any description to the filing and progressing of claims" arising under Article 1 of the September 25, 1964 National Agreement and under Article 11 of such agreement as revised by your notice. This could result in claims being filed long after any normal period of retaining records had expired and when essential witnesses are no longer available or can no longer be expected to recall what occurred. Your notice further provides if the carrier contracts out work, unit exchanges or purchases new equipment or component parts without giving advance notice to the organization involved, "claims filed as a result thereof shall be allowed as presented." Under this proposal, there would be no limitation whatsoever upon the damages allowed if claimed. A claimant could present a claim for a million dollars because the organization was not notified of the purchase of a new locomotive or new freight car and the claim would have to be "allowed as presented." The same would be true if the carrier contracted out work which could have been performed in a day. The organizations' proposal referred to herein would virtually strip the carrier of all defenses to a claim or grievance, insofar as the fact or amount of damages is concerned, and goes far beyond the "rates of pay, rules, or working conditions" to which a Section 6 notice must relate and is contrary to the intent of Section 3 of the Railway Labor Act. Such proposals are punitive rather than remedial, and contrary to the general policy of federal labor laws which is to supply remedies rather than punishment.

3. Your notice proposes to amend a national agreement entered into in 1964 by all of the shop craft organizations on the one hand and most of the nation's Class 1 railroads on the other. The fact that the September 25, 1964 Agreement was entered into on a national basis to apply to all carriers alike demonstrates that the subject of "subcontracting" is a national issue and should be handled on a national basis. Furthermore, it would be improper if not unlawful for a single carrier party to a national agreement to amend certain provisions thereof and provide that disputes arising under such amended provisions would still be subject to the dispute machinery

Article 1
not an
issue

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be on the
total number of
cars

not so

set forth in the national agreement to apply only to disputes arising under that agreement -- not amendments thereof. In this respect your attention is directed to the unambiguous language in Article VI, Section 1, of the national agreement which provides as follows:

"In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as 'Board', is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection, and Article II, Subcontracting, of this agreement. The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act, as amended." (Underscoring added).

What about N.R.A.B. Sec. Division cases on current agreement amendments?

The amendment we have proposed would come under Art II if the parties agree.

(This Carrier is without authority to enter into a contract which provides for disputes arising under provisions other than those contained in the national agreement to be handled under the disputes machinery provided therein.)

As pointed out above, it is still our desire to find an amicable settlement to this dispute and trust that the mediation sessions now being conducted will bring that about. However, our participation in such sessions should not be construed to mean that we accept your March 25, 1968 notice as proper and a subject of mandatory bargaining under the Railway Labor Act.

Yours truly,

A. E. Egan.

K

cc: Members of National Mediation Board
Mediator Charles A. Peacock

Chicago, Illinois
January 21, 1969

Mr. A. E. Egbers
Assistant to President
Chicago, Burlington & Quincy Railroad Co.
547 W. Jackson Boulevard
Chicago, Illinois

Dear Sir:

With reference to your letter of January 20, 1969, your
file Shops 2016-68:

The Organizations do not feel it necessary at this time to
answer point by point all of the erroneous allegations raised in
your letter. We may do so later.

However, we do feel that your contention that this issue is
non-bargainable and in violation of the Railway Labor Act must be
answered.

Your contention if correct, and it is not, would mean that
the carriers, the Organizations, the National Mediation Board and
Emergency Board 160 were all in violation of the Railway Labor Act
when Mediation Case A-7030 was negotiated and signed. Further
if your contentions were correct, and they are not, then both the
carrier and the Organization have been in violation of the Railway
Labor Act since the issue involved in Mediation Case A-8428 was
raised, and the National Mediation Board would have been in viola-
tion of the Law when this case was docketed and assigned a mediator.
The absurdity of your contention is self-evident.

The absurdity of your contention is further shown in the fact
that the issue was not raised in your counter notice of March 29,
1968, nor at the first meeting held on April 25, 1968 and shown
further in that, since the notices were served, and at various times
in the course of these negotiations counter proposals have been ex-
changed.

The entire tone of your letter and past actions in meetings
have indicated that carrier will talk but not negotiate. Your letter

APPENDIX G

Mr. A. Egbers

- 2 -

January 21, 1969

further indicates that no matter what came out of these negotiations you intend to raise the issue of bargainability and not only use that as a dilatory and stalking tactic, but perhaps also as an excuse not to sign any agreement on this issue.

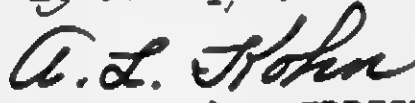
The Organizations are under the impression that both sides are obligated to bargain in good faith and not "muddy the water" by raising issues already settled.

Since you have, with your letter of January 20, 1969, put the Organizations and the carrier on notice that you intend to contest the legality of these negotiations, and since you have further put the National Mediation Board and its President under notice that, (in your opinion) both were in violation of the Railway Labor Act when this case was docketed and assigned a mediator, it becomes incumbent on us to put the carrier on notice that the issue of whether or not this issue is bargainable must be cleared before we can believe that the carrier is bargaining in good faith as required under the Railway Labor Act, as amended. Failing this, we can only believe that carrier is contending that they and we are bargaining on a non-bargainable issue and that carrier will refuse to sign no matter what is negotiated.


We ask therefore that your letter of January 20, 1969 be retracted in its entirety and in writing.

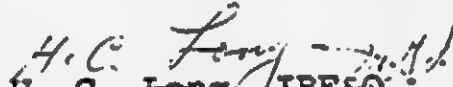
Respectfully submitted,


E. J. Hayes, SMWIA


A. L. Kohn, IBBISBBF&H


W. J. Peck, JBEW


G. R. DeHague, IAM&AW


H. C. Long, IBF&O

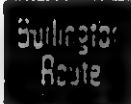

N. G. Robison, BRCA

cc: Members of National Mediation Board
Mediator Charles A. Peacock

BURLINGTON LINES

Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
Fort Worth and Denver Railway Company

A. E. EGBERS
Asst. to the President
G. M. YOUNG
Director of Labor Relations



LABOR RELATIONS AND EMPLOYMENT DEPARTMENTS

547 West Jackson Boulevard - Chicago, Illinois 60605

January 22, 1969

C. J. MANER
E. J. CONLIN
J. D. DAWSON
R. C. LOUCKS
B. G. UPTON
Staff Officers
J. GILLETTE
Super. of Employment
R. V. TODD
Personnel Officer

Shops-2016-68

Mr. E. J. Hayes
President
System Federation No. 95
General Chairman, SMWIA
Aurora, Illinois

Mr. G. R. DeHague
Secretary-Treasurer
System Federation No. 95
General Chairman, IAM&AW
Burlington, Iowa

Mr. A. L. Kohn
General Chairman, IBBISBBF&H
Milwaukee, Wisconsin

Mr. C. H. Long
General Chairman, IBF&O
Tacoma, Washington

Mr. W. J. Peck
General Chairman, IBEW
St. Paul, Minnesota

Mr. N.G. Robison
General Chairman, BRCA
Lincoln, Nebraska

Gentlemen:

Referring to your letter dated January 21, 1969 in response to my letter dated January 20, 1969 in which I made a matter of written record the position of this Carrier, which has been maintained throughout negotiations and mediation, that your March 25, 1968 notice is not a subject of "mandatory" bargaining under the provisions of the Railway Labor Act, as amended.

Your contention that if our position is correct it would mean that "the Carriers, the Organizations, the National Mediation Board and Emergency Board 160 were all in violation of the Railway Labor Act when Mediation Case A-7030 was negotiated and signed" has no foundation whatsoever. The Railway Labor Act does not prevent a Carrier and its employees from conferring about any issue, provided they mutually agree to do so. It does, however, provide that it is not "mandatory" for a Carrier to bargain about matters other than "rates of pay, rules, or working conditions." In the dispute culminating in Mediation Agreement A-7030, the Carriers took the position, like the position we have taken in this dispute, that the Organizations' notice was not a subject of "mandatory"

bargaining under the Act. Nevertheless the Carriers in good faith conferred with the Organizations and subsequently entered into an agreement on the matter.

We have not taken the position, as you contend, that it was unlawful for the Mediation Board to docket this dispute and assign a mediator thereto. Even a cursory reading of the Railway Labor Act reveals that either party may invoke the services of the Mediation Board in any dispute, other than one referable to the National Railroad Adjustment Board. Your attention is respectfully directed to that part of Section 5, First, of the Act reading:

"Section 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

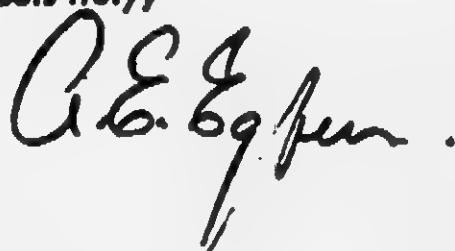
"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused." (Underscoring added).

The Act further provides that "The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time."

We cannot, and will not, retract our January 20, 1968 letter as you have requested. We suggest we get down to the business at hand -- meaningful negotiations in an effort to dispose of the pending dispute. As pointed out in our January 20, 1969 letter, it is our desire and hope that the mediation sessions in which we are now engaged will bring about a settlement of this matter.

Yours truly,



C

cc: Members of National Mediation Board
Mediator Charles A. Peacock

SYSTEM FEDERATION NO. 95
RAILWAY EMPLOYEES' DEPARTMENT, A.F.L. - C.I.O.

January 23, 1969

Re: Mediation Case A-8428 - C&M.

Mr. Charles Peacock, Mediator
National Mediation Board
Washington, D. C.

Dear Sir:

Please be referred to your files on National Mediation Case A-8428. The files will reveal that the representatives of System Federation #95 have been in mediation since October 24, 1968 to this instant date, with no real progress evidenced. The Carrier has consistently maintained their position to this date that the Federation Notice of March 25, 1968 is "not bargainable under the Railway Labor Act."

The Carrier has facetiously stated to the Unions that irrespective of their position relative to bargainability of the union notice, they would proceed in discussions and they did exchange proposals and counter-proposals with the Unions on several occasions, however merely re-arranging the language in grammatical construction of their same original proposal. This continued to occur until November 18, 1968 when the Unions put the Carrier on notice in writing that we expected the Carrier to direct their discussions and negotiations to the Unions' proposal recognized as Appendix A of the March 25, 1968 Section 6 Notice. As a result of the Unions' letter to the Carrier, negotiations became stalemate and a recess was requested by the Carrier and granted by the National Mediation Board.

During this period of recess the Carrier directed a letter to the Unions of their intent to further contract out two diesel units and other roadway equipment, which placed the entire negotiations in an impossible situation and certainly a complete disregard for the spirit and intent of the status quo under the Railway Labor Act.

Because of these delinquent and arrogant acts of the Carrier, the Railway Employees' Department on request of the Unions of System Federation #95 directed a letter under date of November 22, 1968 to the National Mediation Board pointing up these facts and requested that the Mediation Board close their files on this instant case.

For reasons not known to the officers of System Federation #95, the National Mediation Board under date of January 8, 1969, notified all parties concerned that mediation would re-convene. Since the re-convening of mediation up to this instant date, the Unions have met with the Mediator in executive session on January 14, 15, 16 and 17th. Further, they have met jointly with the Mediator and Carrier on January 20, 21, and 22.

APPENDIX I

January 23, 1969

During these joint mediation sessions, the Carrier again submitted to the Unions the same proposal in context as their November 18, 1968 proposal, along with a letter directed to the Federation in which they completely rejected the Unions' original proposal which is recognized as Appendix A of the March 25, 1968 Notice, as well as a flat verbal statement by Mr. Egbers, Assistant to the President of the CB&Q, that the Carrier did not intend to negotiate any kind of an agreement that would put them back in the manufacturing business of any parts, even those which they have manufactured in the past. The Union considers the making of parts on the Carrier property as an intricate part of the total dispute dealing with the contracting out of Shop Craft work. This position on the part of the Carrier places our entire mediation efforts back to the very first day of October 24, 1968.

On the other hand, the Unions have acted in good faith by revising their proposal as it refers to the original Appendix A and the amending of Article II, Section 2 of the 1964 Agreement, and attempted on more than several occasions to meet all the Carrier's objections, however even these efforts were totally rejected by the Carrier.

Therefore, it is our Federation's opinion and firm position that any further meetings or negotiations with the Carrier would be a vain and useless effort and a total waste of time in an attempt to relieve the pressures of our membership on this Carrier property.

We are again requesting that you report these facts to the National Mediation Board officers and recommend that the Mediation Board release this entire issue and close their files on Case A-8428.

Respectfully submitted

E. J. Hayes
E. J. Hayes, SMIA

A. L. Kohn
A. L. Kohn, IBHISBBF&H

W. J. Peck
W. J. Peck, IBEM

G. R. DeHague
G. R. DeHague, IAMAW

C. H. Long
C. H. Long, IBRO

H. G. Robison
H. G. Robison, BhCA

cc: Members of National Mediation Board
Executive Council

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

JAN 30 1969

January 29, 1969

Case No. A-8428

RAILWAY EMPLOYEES

Mr. A. E. Egbers DEPARTMENT
Asst. to President-Labor Relations
Chicago, Burlington & Quincy Railroad
547 West Jackson Boulevard
Chicago, Illinois 60606

✓ Mr. Michael Fox, President
Railway Employees' Department, AFL-CIO
220 South State Street - Suite 1212
Chicago, Illinois 60604

14B-188-*Definition*

Gentlemen:

On June 17, 1968 the System Federation No. 95, functioning through the Railway Employees' Department, AFL-CIO, by its duly authorized representative made application in due form and in accordance to the provisions of the Railway Labor Act for the services of the National Mediation Board in the following dispute:

A-8428 "Revision of Articles II and VI of September 29, 1964 Agreement - organization's notice of March 25, 1968 and carrier's counter proposals of March 29, 1968."

This dispute was assigned for mediation to Mediator Charles A. Peacock and has been the subject of mediation proceedings, without composing the differences. The mediator reports that he has used his best efforts to bring about an amicable settlement through mediation but has been unsuccessful.

In accordance with Section 5, First, of the Railway Labor Act, the National Mediation Board therefore now requests and urges that you enter into an agreement to submit the controversy to arbitration as provided in Section 8 of the Act.

In making your written reply, which is requested at your earliest convenience, please submit it in triplicate so that we may transmit a copy to the other party as advice of your determination in the matter.

Very truly yours,

Thomas A. Tracy
Thomas A. Tracy
Executive Secretary

RECEIVED Feb 3 1969

APPENDIX J

- 2 -

Mr. Thomas A. Tracy

January 31, 1969
14B-188-Section 6

P.S. on copies to Executive Council, Executive Board Members
Sys. Fed. 95, Brothers Haesaert, Stenzinger, DeGregorio,
Gladney and Anderson:

Copy of Board letter of January 29, 1969,
is attached for your file and information.

MF

RECEIVED FEB 3 1969

EXECUTIVE COUNCIL

RUSSELL K. BERO
New Brotherhood Building
Kansas City, Kansas 66101

GEORGE L. O'BRIEN
4929 Main Street
Kansas City, Missouri 64112

CHARLES M. PILLARD
1200 15th Street N.W.
Washington, D. C. 20005

P. L. SIEMMLER
1300 Connecticut Avenue, N.W.
Washington, D. C. 20036

EDWARD F. CARLOUGH
1800 Connecticut Avenue, N.W.
Washington, D. C. 20036

W. E. FROENBERGER
200 Maryland Avenue, N.E.
Washington, D. C. 20002

"Eled Your Friends and Defeat Your Enemies"

Railway Employees' Department

SUITE 1212 / 220 SOUTH STATE STREET

TELEPHONE 427-9846 AREA CODE 312

CHICAGO, ILLINOIS 60604



MICHAEL FOX, President

HOWARD PICKETT, Sec'y-Treas.

AFFILIATED ORGANIZATIONS

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS.

BROTHERHOOD RAILWAY CAR-MEN OF THE UNITED STATES AND CANADA.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO SPACE WORKERS.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.

INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS.

January 31, 1969

IN REPLYING PLEASE REFER TO OUR FILE

No. 14B-188-Section 6

Re: Section 6 Notice - Chicago, Burlington &
Quincy Railroad Company.
National Mediation Board Case A-8428.

Mr. Thomas A. Tracy
Executive Secretary
National Mediation Board
Washington, D. C. 20572

Dear Mr. Tracy:

Acknowledgment is made of your letter dated January 29, 1969, addressed jointly to Mr. A. E. Egbers, Assistant to President - Labor Relations, Chicago, Burlington & Quincy Railroad Company, and the undersigned, dealing with the above dispute.

You state that this dispute was assigned for mediation to Mediator Charles A. Peacock and he has used his best efforts to bring about an amicable settlement without success.

You therefore request and urge that in accordance with Section 5, First, of the Railway Labor Act, we enter into an agreement to submit the controversy to arbitration as provided in Section 8 of the Act.

I am authorized to advise you, on behalf of the Organizations involved in this dispute, that we have given serious consideration to your request and regret to advise that in view of the issues involved in the dispute, we must respectfully decline to submit the controversy to arbitration as you have requested.

Very truly yours,

Michael Fox
President

3B/sc

(2) copies enclosed

cc: Executive Council Members
Executive Board Members ✓
System Fed. No. 95

Mr. E. J. Haesaert cc: Mr. F. T. Gladney
Mr. R. E. Stenzinger Mr. D. S. Anderson
Mr. J. J. DeGregorio

APPENDIX K
RECEIVED FEB 3 1969

BURLINGTON LINES

Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
Fort Worth and Denver Railway Company

FEB 10



'69

A. E. EGNERS
Asst. to the President
G. M. YOUNG
Director of Labor Relations

LABOR RELATIONS AND EMPLOYMENT DEPARTMENTS
347 West Jackson Street - Chicago, Illinois 60606

C. J. MAHER
E. J. CONLIN
J. D. DAWSON
M. C. LOUCKS
Staff Officers
J. GILLETTE
Supv. of Employment
R. W. TODD
Personnel Officer

February 8, 1969

Shops 2016-63

Mr. Thomas A. Tracy (2)
Executive Secretary,
National Mediation Board,
Washington, D.C. 20572

Dear Sir:

Please refer to your file in Case No. A -8428, a dispute between this Carrier and System Federation No. 95.

Your letter of January 29, 1969 to Mr. Michael Fox and the undersigned, requested that the parties enter into an agreement to submit this controversy to arbitration. This letter was not received in my office until the afternoon of February 4, 1969. Before that date Mr. Fox had rejected arbitration in his letter to you of January 31, 1969. We were so advised in your letter of February 4, 1969, received here on February 6, 1969.

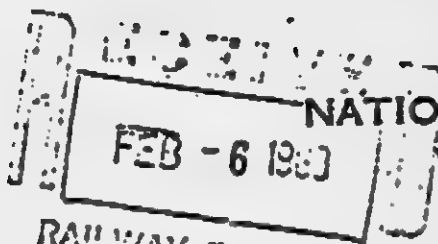
Please be advised that this Carrier would have been willing to submit this controversy to arbitration as suggested in your letter of January 29, 1969, if an agreement on the issues to be arbitrated could have been reached.

Yours truly,

A. E. Egners

RECEIVED FEB 15 1969

APPENDIX L



NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

February 4, 1969
Case No. A-8428

RAILWAY EMPLOYEES
Mr. A. E. Egbers
Asst. to President-Labor Relations
Chicago, Burlington & Quincy Railroad
547 West Jackson Boulevard
Chicago, Illinois 60606

✓Mr. Michael Fox, President
Railway Employees' Department, AFL-CIO
220 South State Street - Suite 1212
Chicago, Illinois 60604

Gentlemen:

14B. 188- J. L. L. 6

We have been advised by Mr. Michael Fox, President, Railway Employees' Department, AFL-CIO, in answer to our letter addressed jointly to your respective carrier and organization, under date of January 29, 1969, that the organization has declined, in writing, to arbitrate the question in our Case No. A-8428.

Your attention is therefore directed to the last clause in Section 5, First (b) of the Railway Labor Act, as amended, reading as follows:

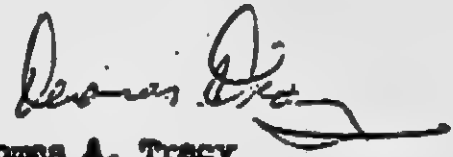
"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the law) have this day been terminated under the provisions of the Railway Labor Act.

We are sending to Mr. Egbers a copy of Mr. Fox's letter dated January 31, 1969.

By order of the NATIONAL MEDIATION BOARD.


Thomas A. Tracy
Executive Secretary

RECEIVED FEB 10 1969

RECEIVED FEB 10 1969

APPENDIX M

February 18, 1969

Mr. William J. Quinn, President
CBAQ R.R. Company
Chicago, Illinois

Dear Sir:

Please refer to previous correspondence regarding the subcontracting of the shop craft work by this Carrier.

Our System Federation No. 95 has tried in vain to escape a confrontation on this bitter dispute, but to date we have only met rebuff and disdain for these attempts. Our attempts started early in 1965 and then as late as February 9, 1968 we again held a conference with Mr. A. E. Egbers in hopes that we could avoid actions under the Railway Labor Act. In this conference we gained no assurance that these practices would even be curtailed, but rather the opposite which would and was even more prevalent usage of subcontracting to circumvent our contractual rights to this work.

So we were forced to serve a Section 6 Notice on March 25, 1968 to protect our contractual rights as well as the jobs and livelihood of our membership. Our efforts to gain conferences on this Notice were very fruitless and the few held bore the same results as the one on February 9th. Mediation was invoked and continued through January 22, 1969.

Even while these Mediation sessions were occurring we received numerous reports of absolute violations of the present agreement governing these practices. Also notices were served on us of larger and more extensive subcontracting practices in a very disdainful attitude regarding our attempts toward collective bargaining on this dispute. These attitudes and practices have angered your employees to the breaking point where they are almost beyond controlling.

The abuses during Mediation sessions were so prevalent and obvious that Mr. A. E. Egbers addressed a letter to all Carrier officers on November 19, 1968 advising them to comply with our agreement. A copy was given to the Mediator, as well as to us, and yet as early as our return home that weekend we were made aware of continued violations by our membership. These have continued to this very date and also on this date we have received a letter from the Labor Relations Department advising that another G.E. engine is being sent off the property for repairs.

APPENDIX N

You will note in this letter that the contention is that this is not the work of our crafts which along with everything else stated in this category, leaves us with no contractual rights left at all on this Carrier according to your Labor Relations Dept. and Mechanical Officers. This contention is of course absurd and unrealistic in that we have always repaired and maintained diesel units and engines of every make and model ever manufactured.

Immediately prior, to receiving this last affront to our efforts, Mr. Egbers had asked us for further meetings to commence on February 27, 1969. We had accepted this suggestion even though released by the Mediation Board on February 4, 1969. We had hopes that perhaps a proper climate might now be established that would finally produce some meaningful negotiations toward resolving this dispute.

Now with the receipt of this latest letter which we feel exhibits complete disdain to our Organizations, and to your employees who we represent, again our hopes for a peaceful solution have seemingly been deliberately squashed. These actions bait and goad our members into demanding actions that apparently some on this Carrier seem to want or could care less about. Such a situation makes collective bargaining a farce and completely hopeless.

Yours truly,

E. J. Hayes

President System Federation No. 95
and General Chairman, SMWIA

L. R. Le. Hagne

Secretary System Federation No. 95
and General Chairman, IAMAW

A. L. Kohn

General Chairman, IBBISBBF&H
cc: Executive Council R.E.D.
A. E. Egbers
R. B. Taylor

B. H. Long

General Chairman, IBF&O

W. J. Park

General Chairman, IBEW

W. Robinson

General Chairman, BRCA

March 7, 1969

MEMORANDUM FOR THE NEGOTIATING COMMITTEE OF SHOP CRAFT ORGANIZATIONS
COMPRISING SYSTEM FEDERATION NO. 95:

You requested at our conference yesterday that we reduce to writing our oral proposal made to you on March 5, 1969 which was a new approach in an effort to resolve the dispute growing out of your March 25, 1968 Section 6 Notice and the Carrier's March 29, 1968 proposals for concurrent handling therewith. We informed you that we would give consideration to doing so.

The Carrier's proposal attached hereto is intended to be a new and different approach to resolution of this dispute and is made with the understanding that previous proposals by the Carrier handed you during progression of this dispute are hereby withdrawn.

It should also be understood that this proposal is made in an effort to conclude negotiations in this dispute, and should not be construed to mean that the Carrier has abandoned its March 29, 1968 Notice. If the attached proposal is not acceptable to the Organizations, the Carrier reserves the right to further progress its March 29, 1968 Notice to a conclusion.

A. E. Egbers
J. D. Dawson
B. G. Upton

Representing the CB&Q

APPENDIX O

3/7/69

A G R E E M E N T

This Agreement made this _____ day of March, 1969, by and between the Chicago, Burlington & Quincy Railroad Company and its employees represented by the Shop Craft Organizations signatory hereto comprising System Federation No. 95 of the Railway Employees Department, AFL-CIO.

IT IS AGREED:

ARTICLE 1 - EMPLOYEE PROTECTION

Section 1 -

Article 1 - Employee Protection - of Mediation Agreement A-7030 dated September 25, 1964 is hereby cancelled. ?

Section 2 -

The Organizations, parties hereto, recognize the right of the Carrier to purchase new equipment and component parts; and that the Carrier has and may exercise the right to introduce technological and operational changes. ?

Section 3 -

The Carrier will maintain ^{a full} forces (i.e. positions) represented by each Organization signatory hereto in such a manner that reductions of positions below the established base as defined herein shall not exceed five percent (5%) per annum. For example, if the established base for a particular Organization is 100 positions, the Carrier will only be permitted to reduce positions of employees represented by such Organization during 1969 and each year thereafter by 5 per year.

The "established base" shall mean the total number of employees in each craft represented by the Organizations signatory hereto holding regularly assigned positions on the effective date of this Agreement and those employees at Aurora

Shops who are recalled and return to service pursuant to Section 4 of this Article 1.

Section 4 -

All employees at Aurora Shops represented by the Organizations signatory hereto who are not now working for the Carrier will be recalled within ten (10) days following the effective date of this Agreement and will be offered positions in the enlarged seniority district created under Section 5 of this Article 1. Provided such employees return to service within 10 days' from date of recall, they will be considered "protected employees" and entitled to the benefits set forth in Section 6 of this Article 1. It is understood, however, that furloughed employees at Aurora Shops who return to service in accordance with this Section might subsequently be required to change their point of employment in accordance with Section 6 of this Article 1.

Section 5 -

Employees represented by the Organizations signatory hereto holding seniority in a particular craft at Aurora Shops, Aurora-Eola Roundhouse, Eola Repair Track and Eola Reclamation Plant shall, on the effective date of this Agreement, have their seniority dovetailed onto one single roster for that craft. Thereafter, employees will be assigned to those facilities on the basis of the merged seniority roster.

Section 6 -

(a) Employees represented by the Organizations signatory hereto who hold regularly assigned positions on the effective date of this Agreement, or who return to service in accordance with Section 4 of this Article 1, will be considered "protected employees." "Protected employees" will not be deprived of employment except in case of resignation, death, retirement, dismissal for cause, or failure to retain or obtain a position available to him in the exercise of

his seniority rights. "Protected employees" who refuse available employment as hereinafter provided will not be entitled to the protective benefits of this Agreement during any period they are not available for work or during any period they are furloughed because of their unwillingness to accept employment in their craft in accordance with this Section 6.

(b) If a protected employee cannot hold a position at the point at which employed on the date of this Agreement, he may be offered an available position within his craft on Lines East or Lines West of this Carrier, dependent on the territory in which his home seniority rights is located.

(c) If a protected employee is offered and accepts employment at another location in accordance with paragraph (b) of this Section 6, and such location is in excess of 35 normal route miles from his former work location but which is not closer to his residence than his former work location, he will be entitled to the benefits of Sections 10 and 11 of the Washington Job Protection Agreement.

ARTICLE 11 - CLASSIFICATION OF WORK RULES

Section 1 -

Repair work on General Electric Locomotives, outside the warranty period, shall be considered within the classification of work rules to the same extent as work currently performed on EMD Locomotives. The Carrier will commence performing the following repair work on General Electric locomotives not under warranty on the effective date of this Agreement:

Main Generators
Alternators

Traction Motors
Trucks

Diesel engine?

Section 2 -

The Carrier will proceed to secure necessary equipment to perform all repair work it now currently performs on EMD locomotives, and will commence such repairs within one year from the effective date of this Agreement.

Repairs to General Electric locomotives outside the warranty period during the one-year period following the effective date of this Agreement (except for repairs to main generators, traction motors, alternators and trucks) may continue to be sub-contracted and such subcontracting will not be considered a violation of this Agreement or any other Agreement in effect between the parties hereto. The sub-contracting of repairs to General Electric locomotives following the one-year period referred to herein will be subject to Article II of Mediation Agreement A-7030 dated September 25, 1964. ?

ARTICLE III - CONFLICT WITH OTHER AGREEMENTS

Section 1 -

If there is any conflict between this Agreement and Mediation Agreement A-7030 dated September 25, 1964 or currently effective collective agreements between the parties signatory hereto, this Agreement will take precedence over such other Agreements.

Section 2 -

The provisions of Article I, Sections 3, 4 and 6 will be automatically cancelled upon consummation of the Burlington Northern merger. ✓

ARTICLE IV - RESOLUTION OF DISPUTES

Section 1 -

Article VI of Mediation Agreement A-7030 is hereby amended to provide that the Shop Craft Special Board of Adjustment established thereunder will only have jurisdiction of disputes on this Carrier arising under Article II - Subcontracting - of that Agreement.

Section 2 -

Any disputes arising under this Agreement shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

ARTICLE V - EFFECT OF THIS AGREEMENT

This Agreement is in full and final settlement of the dispute growing out of the Organizations, March 25, 1968 Notice and the Carrier's March 29, 1968 Notice served on the Organizations for concurrent handling therewith.

ARTICLE VI - EFFECTIVE DATE

The provisions of this Agreement shall become effective April 1, 1969, and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended. Section 6 notices will not be initiated by any party to this Agreement covering the subject matter of the notices disposed of by this Agreement or employee protection benefits prior to January 1, 1971.

3/7/69

Article I, Section 7

(a) Notwithstanding other provisions of this Article I, the Carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions is not performed.

Sixteen hours' advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency.

(b) Incumbents of positions abolished or employees furloughed as a result of the incumbents exercising their seniority in emergency situations outlined above will not be entitled to the protective benefits of this Article I during the period of such furlough.

MEMORANDUM OF DEFENDANTS IN OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION AND IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
(PAGE 1, ONLY)

DOCKET ITEM 20

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO,
SYSTEM FEDERATION NO. 95, and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, et al.,

Defendants.

CIVIL ACTION

NO. 630-69

MEMORANDUM OF DEFENDANTS IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The defendants in the above-entitled action, the Railway Employees' Department, AFL-CIO, et al., submit this memorandum of points and authorities to the Court in opposition to the motion of the plaintiff Chicago, Burlington & Quincy Railroad Company (Burlington) for a preliminary injunction in the above-entitled case.

The memorandum is supported by a joint affidavit of the union representatives who have participated in this dispute and are familiar therewith, namely Messrs. G. R. DeHague, Edward Hayes, M. G. Jewett, Arthur Kohn, W. J. Peck, N. G. Robison, and Paul Marnell.

STATEMENT OF THE CASE

A. Nature of the Litigation

In this case the Burlington, a railroad carrier in interstate commerce, seeks to enjoin six unions representing shopcraft employees of the Burlington pursuant to the provisions of the Railway Labor Act (45 U.S.C.A., Section 151 et seq.) along with the Railway Employees' Department, AFL-CIO, and System Federation No. 95 of such department, with which the six unions are affiliated, from striking in a "major" labor dispute involving proposals for the revision of an existing collective bargaining agreement between the Burlington and the unions in which the procedures provided by the Railway Labor Act have been exhausted and the parties are left by that statute to self-help.

STIPULATION EXTENDING TIME WITHIN WHICH PLAINTIFF
MAY PLEAD TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

DOCKET ITEM 23

23

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO, ET AL.,

Defendants.

Civil Action No. 630-69

STIPULATION

On March 31, 1969, Defendants served upon Plaintiff a Motion for Summary Judgment in the above-entitled action. It is hereby stipulated by the parties, through their respective counsel, that Plaintiff's time for responding to such motion will be extended until May 6, 1969.

Dated: April 7, 1969

Francis M. Shea
Attorney for Plaintiff

James L. Highaw, Jr.
Attorney for Defendants

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF
UNITED STATES DISTRICT JUDGE AUBREY C. ROBINSON
SUPPORTING PRELIMINARY INJUNCTION FOR PLAINTIFF
AND DENYING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

DOCKET ITEM 24

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD,
Plaintiff

vs.

RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO;
SYSTEM FEDERATION NO. 95;
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS;
INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS & HELPERS;
SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION;
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS;
BROTHERHOOD RAILWAY CARMEN OF UNITED STATES
AND CANADA; and
INTERNATIONAL BROTHERHOOD OF FIREMEN
AND OILERS,
Defendants

Civil Action

No. 630-69

FILED

APR 9 1969

ROBERT M. STEARNS, CLERK

PRELIMINARY INJUNCTION

The Plaintiff Chicago, Burlington & Quincy Railroad
having filed a Motion for Preliminary Injunction with support-
ing memoranda and affidavits; the six defendant labor unions
representing shopcraft employees of the plaintiff along with
the Railway Employees' Department, AFL-CIO, and System
Federation No. 95 of such department having submitted
memoranda and affidavits in opposition to the foregoing
motion; having heard oral argument by counsel for the
parties, the Court makes the following Findings of Fact
and Conclusions of Law:

Findings of Fact

(1) Plaintiff is a corporation incorporated under the law of the State of Illinois engaged in the interstate rail transportation of freight and passengers.

(2) Defendant Railway Employees' Department, AFL-CIO, is a voluntary unincorporated association through which the other named defendants function in their representation of plaintiffs' shopcraft employees under the Railway Labor Act. Systems Federation No. 95 is a branch of the Railway Employees' Department, AFL-CIO.

(3) National rules on the subject of "contracting out" have existed in the railroad industry since World War I. The latest national agreement on the subject was the Mediation Agreement of September 25, 1964. This agreement was signed by representatives of one hundred and forty-seven (147) rail carriers (including plaintiff) and by representatives of the defendants in this action. On March 25, 1968, the defendant labor organizations served on plaintiff a demand for an amendment to the national collective bargaining agreement (hereinafter referred to as the Mediation Agreement). The notice was purportedly served pursuant to Section 6 of the Railway Labor Act [45 U.S.C. § 156 (1964)]. This notice proposed revisions of Articles II and Article VI of the September 25, 1964 Mediation Agreement.

(4) Article II of the 1964 Mediation Agreement dealt with subcontracting of work. Defendants' Section 6 notice

advised Plaintiff of the union desire to revise this article to require special agreement on specific work between carrier and the general chairman of the craft before work could be subcontracted and further required special agreement with respect to unit exchange, purchase of new equipment or component parts manufacturing, repairing and rebuilding which was work set forth in the classification of work rules.

(5) Article VI of the 1964 Mediation Agreement provided the machinery for the resolution of disputes arising out of the agreement. Defendants' Section 6 notice advised of the union desire to amend this Article by broadening the remedy provisions.

(6) Plaintiff filed a counter notice purportedly under Section 6 of the Railway Labor Act. This notice sought the elimination of all agreements pertaining to the subject matter of Article II and an amendment to Article I of the Mediation Agreement.

(7) Conferences between Plaintiff and representatives of defendants concerning these proposed changes in the Mediation Agreement were held but no agreement reached. Plaintiff, from the outset, has insisted that negotiations on the subject matter of the Section 6 notice required notice to and involvement of the other one hundred and forty-six (146) carriers with whom the 1964 Mediation Agreement was signed. Plaintiff has also insisted that the

demands are not mandatorily bargainable under the Railway Labor Act. Defendants have maintained a contrary position as to both issues. The services of the National Mediation Board were utilized unsuccessfully, its proffer of voluntary arbitration having been rejected by both parties. Its services terminated effective February 4, 1969.

(8) Defendants assert their present right to strike, post-mediation conferences having also been terminated without success. Unless enjoined such a strike would probably result in the suspension of transportation of passengers and freight on plaintiff's extensive railway system with the consequence that plaintiff would be impeded in its ability and obligation to provide common carrier service in the public interest as required by statute, and further many of its employees would be deprived of wages and employment during any such strike, an extended area of the country and many businesses would be deprived of essential transportation services and interstate rail transportation would be seriously impeded to the detriment of private and public business and to the injury and impairment of public safety and health.

(9) There is substantial showing from the history of the relationship between the parties that the subject matter of Defendants' Section 6 notice relates to matters that are mandatorily bargainable under the Railway Labor Act and does relate to "rates of pay, rules, or working conditions" within the meaning of Section 6 of the Railway Labor Act.

(10) There is also a substantial showing from the history of the relationship between the parties that defendants' attempt to modify the national agreement without resorting to the multi-employer bargaining unit which had previously considered the subject matter of the Section 6 notices is a violation of the plaintiff's rights under the Railway Labor Act.

(11) The parties to the Mediation Agreement of 1964, including the parties to this action, are presently engaged in bargaining concerning modification of the "contracting out" provisions of the Mediation Agreement.

Conclusions of Law

(1) The Court has jurisdiction of the parties and the subject matter of these proceedings.

(2) The March 1968 Section 6 Notice served by defendants upon plaintiffs covered matters which are mandatorily bargainable under the Railway Labor Act. The subjects for mandatory bargaining under the Railway Labor Act are defined in Section 6 merely by reference to "rates of pay, rules, or working conditions." 45 U.S.C. § 156 (1964) "But the courts have ratified the practice of the industry so that the duty to bargain 'generally has been to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States.' That is, 'what carriers must legally bargain about is affected by what is in fact bargained about in the railroad world.'" Brotherhood of Railroad Trainmen v. Akron & B.B.R. Co., 128 U.S.App.D.C. 59, 79, 385 F.2d 581, 601 (1967).

The unions' demands with respect to "contracting out" involve matters that have been "in fact bargained about in the railroad world." Indeed, the March 1968 notice dealt with a subject matter which had been bargained about by the Burlington Railroad with its employees in 1962, contained initial proposals substantially similar to the proposals set forth in the defendants' 1962 notice, dealt with a subject matter which Presidential Emergency Board No. 160 found properly bargainable because of the public interest and because of the impact of carrier practices in regard to "contracting out" upon the employment of the employees represented by defendants, and dealt with a subject matter which was in fact negotiated upon and became part of a national agreement between Burlington (and other railroad carriers) and the defendants executed in 1964. See Article II, Mediation Agreement of September 24, 1964. In addition to the fact that "contracting out" has in fact been bargained about by the parties to this suit in the past, it has been explicitly held by the Supreme Court that "contracting out" is a "condition of employment," a term from the National Labor Relations Act, 29 U.S.C. § 158(d) (1964), with substantially the same meaning as "working conditions" in the Railway Labor Act, 45 U.S.C. § 156 (1964). In affirming a decision of the United States Court of Appeals for the District of Columbia, the Court said, "A stipulation with respect to the contracting out of work performed by members of the bargaining unit might appropriately be called a 'condition of employment.'"

The words even more plainly cover termination of employment which, as the facts of this case indicate, necessarily results from the contracting out of work performed by members of the established bargaining unit." Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203, 210 (1964). Thus, viewed both as a subject about which the parties have bargained in the past and a subject within the statutory language of "rates of pay, rules, or working conditions," the matters contained in the March 1968 Section 6 notices are mandatorily bargainable under the Railway Labor Act.

(3) The issue of "contracting out" must be bargained by the unions with the multi-employer bargaining unit established by the carriers to deal with this issue.

"The Railway Labor Act does not universally and categorically compel a party to a dispute to accept national handling over its protest. Such bargaining is certainly lawful, however. Whether it is also obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements."

Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co., 127 U.S.App.D.C. 298, 302, 383 F.2d 225, 229 (1967). The subject matter of the parties' current dispute is one that has been handled, historically, on a multi-employer basis by the carriers' designated national representative and the unions. See Mediation Agreement of September 25, 1964, supra.

It is one as to which the unions themselves continue to recognize that multi-employer bargaining is appropriate, as indicated by the fact that most of the defendants served national notices on most of the Nation's carriers which include proposals regarding "contracting out" and which gave rise to national bargaining which is now in progress. Having recognized the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees as the national representative of the carriers, the unions are not now free to compel the Burlington Railroad to bargain with them on a unilateral basis and thus break up the established multi-employer bargaining unit. When such a pattern of national bargaining has been established and the issues are not unique to the unions' dealing with any specific carrier, then both "the practical appropriateness of mass bargaining on that point" and "the historical experience" in handling the issue in the past make national handling of the matter obligatory. Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co., supra. Defendants' contention that the Burlington (and not the other carriers who were parties to the 1964 agreement) abused the agreement, and that such abuse justifies the unions in making unilateral demands on the Burlington, is without merit, for the 1964 agreement established an arbitration board to decide just such grievances; alleged abuses of the terms of the agreement do not justify abandonment of the agreement itself. See Article VI, Mediation Agreement of September 25, 1964, supra.

(4) Since both plaintiff and defendants were operating on incorrect legal premises, both failed to comply with the requisites of the Railway Labor Act.

The Court reaches no conclusion on the issue of "good faith" bargaining, for the critical issue is not whether plaintiff and/or defendant failed to bargain in good faith. Rather, the crucial point is that while both complied with many of the formalities of the Act, each relied on incorrect legal positions. Plaintiff's persistent contention that the issue of "contracting out" was not bargainable under the Railway Labor Act, while perhaps not urged in bad faith, was legally unsound and made ultimate agreement an impossibility. Similarly, defendants' belief that Burlington was the proper bargaining unit and its insistence that Burlington negotiate with them on an issue previously decided nationally, while perhaps not held in bad faith, was legally incorrect and made ultimate agreement impossible. Defendant served notice on the improper bargaining representative, while plaintiff maintained a position throughout the negotiations which tended to make those negotiations fruitless. In sum, although perhaps with the best of intentions, neither party bargained in the way contemplated by the spirit and the detailed framework of the Railway Labor Act designed to facilitate the voluntary settlement of major disputes.

(5) Having failed to bargain in the way contemplated by the Railway Labor Act, defendants are not free to strike.

"The heart of the Railway Labor Act is the duty, imposed

by § 2 First [45 U.S.C. § 152, First (1964)] upon management and labor, 'to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carriers and the employees thereof.' The Act provides a detailed framework to facilitate the voluntary settlement of major disputes." Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., No. 69 - Oct. Term, 1968 (Supreme Court, March 25, 1969), slip opinion at 8-9. Only after the procedures outlined in the Act "have been exhausted without yielding resolution of the dispute" may the disputants resort to self-help. Id. The procedures outlined in the Act not having been exhausted, we conclude that the unions may not resort to self-help and may therefore be enjoined from striking. Brotherhood of Railroad Trainmen v. Akron & B.B. R. Co., 128 U.S.App.D.C. 59 , 91, 385 F.2d 581, 613 (1967).

(6) Section 8 of the Norris-LaGuardia Act does not prevent this Court from enjoining the unions from striking. Section 8 of the Norris-LaGuardia Act provides that a federal court shall not grant a restraining order or injunction in a labor dispute where the complainant "has failed to comply with any obligation imposed by law which is involved in the labor dispute in question." 29 U.S.C. § 108 (1964). It is equally clear that a party to a dispute under the Railway Labor Act may not resort to self-help until he has exhausted the procedures outlined in the Act, Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., supra, and

that injunctive relief is sometimes required to "vindicate the processes of the Railway Labor Act." Brotherhood of Railroad Trainmen v. Chicago River & Indiana R.R. Co., 353 U.S. 30, 41 (1957). In the instant case, there is an apparent conflict between the dictates of the Norris-LaGuardia Act, which seemingly precludes the granting of injunctive relief requested by a plaintiff whom we have concluded has not bargained in the way contemplated by the Railway Labor Act, and the Railway Labor Act, which requires the enjoining of a strike by defendants who have not exhausted the procedures outlined in the Act. We cannot resolve the conflict by holding that the Norris-LaGuardia Act is not relevant to railway disputes, for it has been held that Section 8 is clearly applicable to actions to enjoin violations of the Railway Labor Act. Brotherhood of Railroad Trainmen v. Akron & B.B. R. Co., 128 U.S.App.D.C. 59, 92, 385 F.2d 581, 614 (1967). Yet, it has also been held that where the provisions of the two Acts conflict, the more specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act. Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, 563 (1937). And our own Court of Appeals has outlined the approach to take in analyzing such a conflict: "It may be that in a particular case the District Court might conclude that the imperatives of the Railway Labor Act override Section 8 -- a statutory focusing so to speak of an equity approach whereby lack of clean hands may be overcome by a balancing of interests, particularly where it is the public interest involved."

Brotherhood of Railroad Trainmen v. Akron & B.B. R. Co.,
supra. This is such a case. "If, as the Supreme Court
said in the Chicago River case [353 U.S. 30 (1957),
supra], the provisions of the Norris-LaGuardia Act and the
Railway Labor Act must be accommodated so that the
obvious purpose in the enactment of each is preserved,
it follows that a strike of a union which has refused to
comply with its mandatory duties . . . is illegal and can
be enjoined by the courts notwithstanding the provisions
of the Norris-LaGuardia Act. . . . the legislative history
tends to support the view that (1) it was contemplated
in the original Railway Labor Act that the remedy of injunction
against strikes and lockouts was not barred prior to the
exhaustion of the procedures set forth in the Act, and
(2) the Norris-LaGuardia Act did not contemplate precluding
such injunctive relief." American Airlines, Inc. v. Air
Line Pilots Ass'n., International, 169 F.Supp. 777, 788-89
(S.D.N.Y. 1958). "It is well settled that injunctive
relief may be granted to vindicate the processes of the
[Railway Labor] Act regardless of the provisions of the
Norris-LaGuardia Act. [Citations omitted.] Thus, parties
to a major dispute, while free to resort to a strike
following the exhaustion of the mandatory processes of the
Act, . . . may be enjoined from striking prior to the
exhaustion of such processes." Pan American World Airways v.
International Brotherhood of Teamsters, 275 F.Supp. 986, 999-1000
(S.D.N.Y. 1967). On the basis of the foregoing, we conclude
that injunctive relief to compel compliance with the positive
mandates of the Railway Labor Act is not barred by the

restrictions of Section 8 of the Norris-LaGuardia Act. Since the purpose of Section 8 is to effectuate the traditional equity policy of the "clean hands" doctrine, our conclusion that Section 8 is no bar to an injunction is reinforced by our earlier finding that the crucial issue is not whether the parties bargained in good faith but that both bargained in reliance on incorrect legal premises. We further conclude that, upon "a balancing of interests, particularly . . . the public interest", Brotherhood of Railroad Trainmen v. Akron & B.B. R. Co., 128 U.S.App.D.C. 59, 92, 385 F.2d 581, 614 (1967), the injunction must issue "in order to avoid any interruption to commerce or to the operation of any carrier," the very purpose of the Railway Labor Act. 45 U.S.C. § 152 (1964).

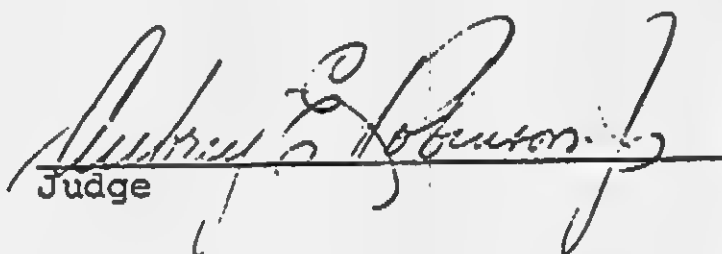
The Court having entered its findings of fact and conclusions of law, it is this 9th day of April, 1969,

ORDERED that Plaintiff's Motion for a Preliminary Injunction be and is hereby granted, and that defendants, the Presidents, Executive Councils, General Chairmen and other officers of any of the defendants, the agents, employees and members of any of the defendants, and all persons acting in concert with them be and are hereby restrained from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of plaintiff, and it is

FURTHER ORDERED that said preliminary injunction shall be in force until such time as the parties to this lawsuit have bargained within the dictates of the Railway Labor Act and the conclusions of law contained herein, and

until the procedures of the Railway Labor Act have been fully exhausted, and it is

FURTHER ORDERED that Defendants' Motion for Summary Judgment be and is hereby denied without prejudice.

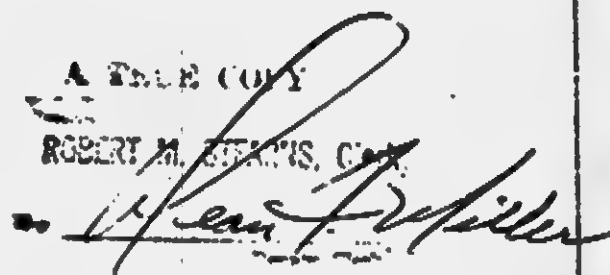

Judge

April 9, 1969
(Date)

Undertaking Plf for \$ 5,000.00
approved and filed apr 9, 1969
ROBERT M. STEARNS, Clerk
By W. F. Filler Deputy Clerk

A TRUE COPY

ROBERT M. STEARNS, Clerk



ORDER ON BOND OF PLAINTIFF

DOCKET ITEM 25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD,

Plaintiff,

vs.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO;
SYSTEM FEDERATION NO. 95;
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS;
INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS & HELPERS;
SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION;
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS
BROTHERHOOD RAILWAY CARMEN OF UNITED
STATES AND CANADA; and
INTERNATIONAL BROTHERHOOD OF FIREMEN
AND OILERS,

Defendants.

Civil Action.

No. 630-69

FILED
APR 9 1969

ROBERT M. STEARNS, CLERK

ORDER

It is hereby ordered:

That the Preliminary Injunction granted in this action the
9th day of April, 1969, is granted on the condition that an undertaking
in the sum of \$5,000.00 be filed to make good such damages not
to exceed said sum as may be suffered or sustained by any party who is
found to be wrongfully enjoined or restrained.

Anthony E. Robinson
UNITED STATES DISTRICT JUDGE

April 9, 1969.

A TRUE COPY

ROBERT M. STEARNS, Clerk

By *Robert M. Stearns*

Deputy Clerk

Undertaking *for* for \$ 5,000.00

approved and filed Apr 9 1969

ROBERT M. STEARNS, Clerk

By *Robert M. Stearns*

Deputy Clerk

DEFENDANTS' NOTICE OF APPEAL NO. 22966

DOCKET ITEM 26

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO
SYSTEM FEDERATION NO. 95, and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, et al.,

Defendants.

CIVIL ACTION

NO. 630-69

NOTICE OF APPEAL

Notice is hereby given that the Railway Employees' Department, AFL-CIO, et al., defendants above named hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the Judgment and Order of the Court entered in this action on the 9th day of April 1969.

Respectfully submitted,

Edward J. Hickey, Jr.
James L. Highsaw, Jr.
William J. Hickey
620 Tower Building
Washington, D. C. 20005

Counsel for the Defendants

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

April 14, 1969

TRANSCRIPT OF HEARING BEFORE JUDGE ROBINSON, APRIL 3, 1969
(PP. 43-44 AND 58-59 ONLY)

DOCKET ITEM 27

shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers.

And then 1 Sixth provides that representatives shall mean any person or persons designated by a group of carriers, as well as plain individual carrier, and 2 Third provides that representatives for purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by others.

Now, if the Court please, classification of work rules weren't intended to decide what the railroad should undertake to do. They were designed initially to separate out what each craft was entitled to work if the railroad was doing that work. But those classifications of work rules go back to the time of the Director General of railroads.

The only agreements, I think there is one Pennsylvania agreement, but the existing agreements were made with all of the railroads. The practice, in short, on this issue of subcontracting, the established practice, is to establish the rules in national handling, so-called, multi-employer bargaining. And today, if the Court please,

they are in session negotiating on new notices, and one of the notices of the carriers deals with this very issue, and they have accepted national handling.

Now what we say is that they are attempting to force us to deal with this not on a national handling basis. We have got this agreement outstanding with the other roads. If there is to be a modification of it, it should be handled in the national handling that is going on now.

THE COURT: But they can deal easier with you than they can with all of the others.

MR. SHEA: But they are not entitled to deal with us. They are not entitled to whipsaw if this is a matter of national handling. And the Court of Appeals, modifying the views of Judge Maltzoff, held under what had seemed to me at the time the clear language of the Act that if there was a dispute involving more than one carrier it had to be dealt with through representatives of the several carriers. But while it modified Judge Maltzoff in this regard, what it concluded was this:

What constitutes good-faith bargaining in the railroad industry is colored by how parties actually bargained in the past. The Railway Labor Act does not

notice. Certainly, we know nothing about it.

Now, Mr. Shea has brought what I think is a very clear red herring into this proceeding, and he has spent a great deal of time talking about the effort of the unions to prohibit the carrier from purchasing diesels, diesel engines.

Now referring back to that document, the original Section 6 notice, it refers only to the classification of work rules and work generally recognized as work on the property of employees. In other words, they are not talking about some other work. They are talking about the work they perform on the property, and they don't build locomotives on the property. No railroad employees ever build locomotives on the property, and it is simply under no stretch of the imagination applicable to that. They were told so. In addition, during the course of the negotiations, when someone asked this, Mr. Quinn, the president of the railroad, as appears in the affidavit, asked this, also, in February Mr. Fox, the president, AFL-CIO Railway Employees' Department, they were told this. Now, apparently, Mr. Shea doesn't believe this is ^a sufficient commitment. And I will make the commitment right here and now on the

record and will pay for a copy of the record for him on behalf of my client, that this is not intended and does not propose that the railroad should have to build diesel locomotives on its property.

With respect to other areas, now, he has talked at great lengths about manufacturing. What basically this is directed toward is that the carriers do, all of them, including the Burlington, manufacture all sorts of metal parts that are done on lathes and by machinists and other shop craft people, and this is primarily what it is directed toward. They all repair or have repaired in varying quantities and practices over the years their own railroad yard.

THE COURT: I don't understand why you can't say that.

MR. HIGGSAN: This is what this says, Your Honor. It says, manufacturing, repairing, and rebuilding, which is set forth in the work rules and is the work generally performed, and this is the work rules and the work generally performed. That is the way to say it.

THE COURT: The way to say it where?

MR. HIGGSAN: What?

SUPPLEMENTAL RELEVANT DOCKET ENTRIES BELOW

CIVIL DOCKET

United States District Court for the District of Columbia

CHICAGO, ILLINOIS vs. RAILWAY EMPLOYEES' C. A. No. 630-69 Supplemental Page No. 1

		FUNDING					
Date				Plus	Total		
1969							
Apr. 3	Motion for preliminary injunction argued and taken under advisement. (Rep: Martha Miller & Harry Kalitz)	Robinson, J.					
Apr. 4	Consent order extending temporary Restraining order until 10:00 a.m. April 10, 1969.	Robinson, J.					
Apr. 7	Settlement extending time for plffs. to respond to motion for summary judgment to May 6, 1969.	Filed					
Apr. 9	Findings of Fact, conclusions of Law and order granting motion of plff. for preliminary injunction and denying motion of deft. for summary judgment. (N)	Robinson, J.					
Apr. 9	Order granting preliminary injunction \$5,000.00 undertaking. (N)	Robinson, J.					
Apr. 10	Injunction undertaking of plff. in sum of \$5,000.00 with Aetna Casualty and Surety Co., approved.	Robinson, J.					
Apr. 14	Notice of appeal by defts. from order of 4/9/69. Copy mailed to Shea & Gardner. Deposit \$5.00 by Hickey.	Filed					
Apr. 17	Transcript of proceedings dated April 3, 1969. Rep. Martha V. Miller (Court's Copy)	Filed					
Apr. 21	Record on Appeal delivered to USCA; Deposit by William J. Hickey \$1.40.	Filed					
Apr. 21	Receipt from USCA for original Record.	Filed					28
Apr. 22	Notice of appeal by plff from order of 4/9/69; deposit \$5.00 by Moore; copies mailed to E. J. Hickey, Jr., James L. Highsaw, Jr., and William J. Hickey	Filed					
Apr. 23	Consent order extending time for defendants to respond until 10 days after entry of order or judgment by U. S. Court of Appeals for D. C. Circuit from order and judgment entered April 9, 1969 but not later than February 1, 1970. (See order for details)	McBulry, J.					29
	(N)						

ORDER EXTENDING TIME WITHIN WHICH DEFENDANTS MAY
FURTHER PLEAD TO COMPLAINT

DOCKET ITEM 29

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY

Plaintiff,

v.

RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, et al.,

Defendants.

Civil Action No. 630-69

ORDER EXTENDING TIME FOR
DEFENDANTS TO FURTHER PLEAD TO COMPLAINT

ORDERED that the time within which the defendants may further plead, or otherwise defend or make any further motion (except those designated in F.R.C.P. 6 (b)) is hereby extended until a date ten (10) days after the entry of an order or judgment by the United States Court of Appeals for the District of Columbia Circuit in disposition of an appeal by defendants from the Order and Judgment entered herein by the Court on April 9, 1969.

U. S. DISTRICT JUDGE

Entered April 1969

Consented to:

Francis C. Shea
For Plaintiff

William J. Hickey
For Defendants

PLAINTIFF'S NOTICE OF APPEAL NO. 22993

DOCKET ITEM 28

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APR 23 1969

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY,

Plaintiff,

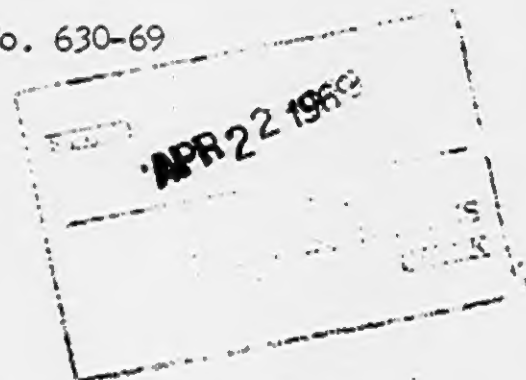
v.

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO;
SYSTEM FEDERATION NO. 95; and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, et al.,

Defendants.

CIVIL ACTION

No. 630-69



NOTICE OF APPEAL

Notice is hereby given that the Chicago, Burlington & Quincy Railroad Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order of this Court captioned "Preliminary Injunction," entered in this action on the 9th day of April 1969.

April 22, 1969.

Respectfully submitted,

FRANCIS M. SHEA
RALPH J. MOORE, JR.
MARTIN J. FLYNN

Shea & Gardner
734 Fifteenth Street, N. W.
Washington, D. C. 20005

Attorneys for Plaintiff

SEQ. # 2

TITLE GUIDE

United States Circuit Court Of Appeals

D.C. CIRCUIT



CASE NAME D. C. INSURANCE ASSOC. VS. W. E. WASHINGTON

DATE 1969

DOCKET NO. 22,967

OFFICIAL CITE NO.

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